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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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MEDA AB

3  
4 Plaintiff

v.

11 CV 0412 (AJN)

5 3M COMPANY, 3M INNOVATIVE  
6 PROPERTIES COMPANY, and RIKER  
7 LABORATORIES, INC.

Defendants

8 -----x

9  
10 New York, N.Y.  
11 January 15, 2013  
12 9:30 a.m.

13  
14 Before:

15 HON. ALISON J. NATHAN,  
16 District Judge

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1 (Trial resumes)

2 (In open court)

3 THE COURT: Good morning, everyone. Please be seated.

4 Preliminary matters to address. We had talked about,  
5 talking about the translation dispute. Do you want to do that  
6 now?

7 MR. ARMENIO: We can give an update, your Honor. We  
8 did have discussions with the defendants and we have narrowed  
9 the disputed number of JXA translations to 8. We are going to  
10 try to get it down even further. None of those disputed  
11 translations related to anyone who testified yesterday or  
12 anyone through the fact witnesses of Mr. Renaudin and Mr.  
13 Stenqvist this morning. With the court's permission, we'll  
14 keep trying to even further hopefully narrow or eliminate the  
15 disputes.

16 THE COURT: That sounds good and that would be great.

17 While we are here, do you want to move the admission  
18 of the undisputed translations in if you have the other 172  
19 numbers?

20 MR. ARMENIO: It is actually a pretty lengthy -- what  
21 we can put on the record more easily for the court is perhaps  
22 list the 8 that remain disputed.

23 THE COURT: Is this broader than the 1 through 180?

24 MR. ARMENIO: It is within the JXA 1 through 180.  
25 Instead of listing the --

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1 THE COURT: You don't have to do that.

2 MR. ARMENIO: -- the disputed JXA's remain only 8, JXA  
3 24, 25, 26, 140, 141, 163, 167 and 173, those are the only  
4 JXA's still under dispute and discussion, so we would offer all  
5 of the other JXA exhibits.

6 THE COURT: Okay. Just verbal agreement from the  
7 defendant?

8 MR. CAMP: No objection.

9 THE COURT: With the exception of the translations Mr.  
10 Armenio just noted, JX 1 A through 180 A are admitted.

11 (Joint Exhibits 1 A through 180 A received in  
12 evidence)

13 THE COURT: Anything else you want to move in at this  
14 point? We haven't talked about how you want to do the  
15 declaration designations and exhibits. Do you want to move  
16 those at one particular point or how did you want to address  
17 this?

18 MR. ARMENIO: We were going to try to work with the  
19 defendants to just have one en mass deposition designation  
20 proffer for your Honor just so we can do it all at once and not  
21 take up the court's time throughout. I would think we are  
22 still working on that maybe tomorrow if we could.

23 THE COURT: That is fine. So you'll do that and  
24 taking into account both the designations and the proffered  
25 exhibits to the extent that any exhibits are coming in via the

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1 designations through agreement, and you'll just identify for me  
2 any outstanding objections that you need to have resolved or  
3 have in mind, okay?

4 MR. ARMENIO: Yes, your Honor. Thank your Honor.

5 THE COURT: Another logistical question. I found some  
6 time on my calendar a week from today. If want to move -- two  
7 weeks from today. Thank you -- two weeks from today if you  
8 want to move the closing, the oral closing to the Tuesday after  
9 we finish rather than the next day, and as I say, I want to do  
10 this quite fast after the close of evidence so it is fresh in  
11 my mind, but I also want to give both you all and me some  
12 reasonable amount of time to put it together.

13 MR. ARMENIO: So for the plaintiff's, your Honor,  
14 unfortunately, Mr. Carlinsky would have a conflict with the new  
15 proposed date. We certainly appreciate the court offering it,  
16 but we propose to keep it as your Honor already suggested on  
17 next Thursday.

18 MR. CARLINSKY: Just to be clear, I have a rescheduled  
19 oral argument in the Central District of California that day.  
20 I would endeavor to try to move it, but I have close to zero  
21 optimism on moving it.

22 THE COURT: Did you reschedule it because I said we  
23 were going to be here that Thursday?

24 MR. CARLINSKY: I rescheduled it because we had the  
25 final pretrial on the 8th, scheduled January 8th. So I moved

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1 it, got it moved to the 29th.

2 THE COURT: Okay. We looked to see, I am just seeing  
3 if there is anything else that week that we can do.

4 (Pause)

5 THE COURT: I could potentially do Wednesday. I have  
6 a guilty plea which I would move, but we can just break for  
7 that, and I have students coming in for a mock trial, but I can  
8 see about moving that if that worked. If it doesn't --

9 MR. CARLINSKY: The problem is --

10 THE COURT: -- I'll let the kids come in.

11 MR. CARLINSKY: The problem for me is the argument is  
12 the 29th. I am hoping to catch the the red eye on the 29th. I  
13 am not going to be in particularly good shape on the 30th.

14 THE COURT: I have a sentencing that we'd have to work  
15 around on that Thursday, but that is definitely the outer  
16 limit. Otherwise, I'm running against my --

17 MR. ARMENIO: Thank your Honor. We appreciate your  
18 Honor's understanding of Mr. Carlinsky's oral argument and  
19 happily accept the defendants' date.

20 MR. RENARD: Moving it would allow us a more effective  
21 opportunity to look at the record and gather everything  
22 together for your Honor's benefit. Thursday would be  
23 agreeable.

24 THE COURT: Thursday, the 31st works?

25 MR. RENARD: Yes.

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1 THE COURT: All right. We'll do that. I'll let you  
2 know what time we'll start. Let's assume 9:30. I'll let you  
3 know if that's going to change.

4 MR. CARLINSKY: I want to thank the court.

5 THE COURT: You're welcome. I saw the looks on your  
6 faces when I said Thursday is all I can bear.

7 In honesty, I want that, that's for me for it to be  
8 useful. As long as you don't come up with some crazy new  
9 arguments between when we close evidence and -- which never  
10 happens in this case -- I think it will be useful for all of us  
11 to have some time together. My thought is it won't be too far  
12 away that the freshness of the evidence won't be lost.

13 I wanted to just give some thoughts on the evidentiary  
14 objections yesterday. I have looked at the hearsay objections  
15 that were made with respect to the Lonner and Dierks testimony  
16 and accompanying exhibits. It seems to me to the extent that  
17 that testimony and exhibits are being offered to establish the  
18 truth of what Mr. Renaudin said, the business record exception  
19 which is proffered, at least as proffered would not apply. I  
20 would sustain that objection.

21 There were some -- now, some alternative theory of the  
22 basis for the proffer was offered which I would consider as  
23 needed in forming my opinion on this. It is not clear to me  
24 exactly what -- actually, I want to make a record so I  
25 understand it. What was the alternative for the purpose

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1 suggested? I think you said something like for its impact?

2 MR. ARMENIO: Yes, your Honor. There were two  
3 alternative purposes. One was that these were contemporaneous  
4 recordings and recordings of what Mr. Renaudin said because  
5 they had indicia of credibility.

6 THE COURT: You're making the business record  
7 exception?

8 MR. ARMENIO: Correct.

9 THE COURT: Under the business records exception?

10 MR. ARMENIO: Business records exception for  
11 established recording and conduct. Then there is the general  
12 catchall for hearsay exceptions where the indicia of  
13 credibility --

14 THE COURT: I wasn't sure if you were looking at the  
15 catchall or making just the argument within the business record  
16 exception.

17 MR. ARMENIO: The business record exception would be  
18 one and I think that addresses the first level. The e-mail  
19 itself is fine. Now the report of the Renaudin statement, I  
20 would say it is contemporaneous in time so it has that aspect  
21 of overcoming hearsay.

22 It also has in general a catchall indicia of  
23 credibility since it is a report from a subordinate to a  
24 superior about a recent conversation, the third basis that your  
25 Honor mentions, you had mentioned, your Honor had mentioned in

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1 the final pretrial conference you may want to understand the  
2 conduct between CEPS and Meda after closing because it may  
3 impact on certain of your Honor's thinking about how people  
4 actually dealt with this in the real world, and on that  
5 alternative basis, what's being reported to Meda about Mr.  
6 Renaudin's comments certainly shows what Meda's state of mind  
7 was when it took certain actions and made certain agreements  
8 with CEPS. So that was the alternative basis for the proffer.

9 THE COURT: Thank you. It seems to me that  
10 non-hearsay basis would be appropriate. I don't think, I don't  
11 think this fits at least based on the foundation in front of me  
12 of the business records exception, and I wouldn't, I wouldn't  
13 apply the catchall, either.

14 The demand letters that were also -- oh, sorry. I  
15 looked at the specifics. They were all generally of the same  
16 pattern with the exception of two of the e-mails, forwarded  
17 letters from Renaudin. That is a different situation. I  
18 didn't know whether, Mr. Collins, your objection, your  
19 objection, Mr. Collins, applied to the letters as well or if it  
20 is the letters you agreed would come in?

21 MR. COLLINS: I guess they're still hearsay, your  
22 Honor. I guess the argument is it is a business record, but I  
23 don't think that is proved or not properly --

24 THE COURT: You don't think the letters on the  
25 letterhead from the committee and the like at least have the



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1 indicia of reliability?

2 Would you think it is somehow not kept as, the  
3 documents aren't kept as a regular matter at Meda?

4 MR. COLLINS: My objection would be I have no reason  
5 to believe they're not, but I don't think they met the burden  
6 of proof.

7 MR. ARMENIO: Your Honor, it is an official record, as  
8 your Honor records on its face it has the CEPS letterhead  
9 signed by Mr. Renaudin.

10 THE COURT: Public record?

11 MR. ARMENIO: Public record. In addition to being  
12 conveyed as a business record, that is separate, it is a public  
13 record in and of itself, so it is not hearsay.

14 MR. COLLINS: I don't think it gets the proper use of  
15 a public record exception, that it is not something that is  
16 generally found in the public records. It is not in the public  
17 records. It is a letter to Meda. I am not saying either way,  
18 I just don't know. Again I don't think they met the burden of  
19 showing it was public records.

20 THE COURT: Who did the letter go? It went to Maupas?

21 MR. ARMENIO: Mr. Maupas, M A U P A S.

22 THE COURT: I've got designations from him, right?

23 MR. ARMENIO: Yes.

24 THE COURT: Do they provide any foundation for the --  
25 I can't remember. I think it might be attached, these e-mails

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1 might be attached to his --

2 MR. ARMENIO: We have to check and easily can confirm  
3 that for you.

4 THE COURT: Why don't you, as part of your efforts to  
5 see if you have agreement on coming in through the depo  
6 designations, see if you can get agreement on that. It seems  
7 to me that letter is likely coming in.

8 Then there was also a slide. This I just was not  
9 clear from the text of PX 541 which there was a paragraph in  
10 Mr. Dierks' declaration that seemed a bit of a non sequitur.  
11 It is something like we had a meeting yesterday and 541 was a  
12 set of slides. This doesn't fall into the general pattern of  
13 seeming to me trying to get in for the truth of what Mr.  
14 Renaudin said, so I can't apply my same basic approach.

15 What is the objection for the slides?

16 MR. RENARD: Your Honor, I am sorry. 541 is?

17 THE COURT: It is one of the -- PX 541, it was  
18 referenced in Paragraph 54 of Mr. Dierks' declaration, which I  
19 think you raised this objection, too?

20 MR. RENARD: Yes, your Honor. This is an internal  
21 Power Point being used by Meda, not by defendants for admission  
22 purposes. It contained a lot of information, especially what  
23 purports to be a history of some of the Flecaine negotiations,  
24 some of the so-called rules which haven't been proved.

25 It is clearly hearsay. It is a Meda Power Point being

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1 introduced by Meda supposedly for the purpose of proving the  
2 matters, at least some of the matters asserted in the Power  
3 Point.

4 MR. ARMENIO: Your Honor, this is a classic business  
5 record. You can see the e-mails from Christoph Maupas. We can  
6 establish he was a country manager in France. It was to  
7 Jorge-Thomas Dierks. The evidence establishes he was COO, and  
8 the evidence establishes he was the regional manager.

9 THE COURT: I don't know what the slide is, do I?

10 All the declaration says is Mr. Dierks says he met  
11 with Maupas and in Paris. Attached as Exhibit 8 is an e-mail  
12 from Mr. Maupas sent me the day after our meeting.

13 MR. ARMENIO: If it is, what is trying to be conveyed  
14 there, this is what was discussed at the meeting, but certainly  
15 Dr. Dierks will be continuing to be on the stand and we can  
16 inquire further if your Honor would like.

17 THE COURT: As we sit here, the objection is  
18 sustained, all right? Then the last issue raised were the  
19 demand letters DX 399 and DX 425. I understand the argument is  
20 that they're not -- well, that they're pursuant to 10.02 of the  
21 acquisition agreement, but the language in the letter seems to  
22 me quite consistent with a demand letter seeking to work out a  
23 resolution. In 399 it says we trust the seller and will work  
24 with Meda to resolve the issues expeditiously and look forward  
25 to receiving your response.

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1           Then in 425 it is clearer, I think. In the spirit of  
2 cooperation, we notified you of material omission with the hope  
3 that Traineau will act responsibly for the mistake and attempt  
4 to resolve this dispute without resort to additional  
5 proceedings and/or litigation.

6           I think this is for Mr. Collins. Isn't that quite  
7 classically a demand letter even though you invoke 10.02?

8           MR. COLLINS: I guess, your Honor, the first argument  
9 would be a demand by letter by itself is not a settlement  
10 within Rule 408.

11          THE COURT: A demand letter in the spirit of  
12 cooperation working to negotiate a resolution?

13          MR. COLLINS: Your Honor, with that language there,  
14 but if we look at the purpose of it, that letter, it is to  
15 invoke 10.02 and get that going, that we want you to indemnify  
16 us and here we have to send this notice.

17          Your Honor, we believe under their interpretation of a  
18 dispute resolution procedure is the filing of a complaint would  
19 be the commencement of a dispute resolution procedure. That  
20 may lead to discussions.

21          THE COURT: So your theory is that any pre-litigation  
22 settlement discussion would not be covered by the rule?

23          MR. COLLINS: It could, your Honor. That is why we  
24 have to look carefully at what we are looking at. Our position  
25 is we shouldn't use broad categories. The fact they put some

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1 conciliatory language in something, that's to conceal the real  
2 purpose. It wasn't sent under the dispute resolution. It was  
3 specific under Article Section 11.10 of Article 11. It was  
4 sent pursuant to 10.02 which required them to specify amount,  
5 unless it is saying demand, honor your indemnification  
6 obligations. I agree with your Honor there is conciliatory  
7 language in there, too. That is not the purpose, that is not  
8 the purpose of sending the demand under 10.02.

9 THE COURT: For what purpose do you want the letter  
10 in? Specifically the information pertaining to an initial  
11 evaluation of damages? You are offering this up to -- well,  
12 what is this for?

13 MR. COLLINS: One reason, and I was thinking about  
14 possibly using it in another examination today is they confirm  
15 that they learned on December 31 they were horribly damaged.  
16 Well, the 2007, no secret, 2007 annual report goes out. I  
17 think they said April yesterday. It was March 27, 2008. The  
18 same day they sent out this demand, they don't disclose the  
19 demand. We think it goes to they were harming us.

20 THE COURT: And, therefore, what? If they didn't  
21 think they were harmed, their damages theory is undermined.

22 What exactly do you want to do?

23 MR. COLLINS: Your Honor, one goes to damages, yes,  
24 whether they have been damaged or thought they were damaged  
25 versus candidly they had some discussions with CEPS.

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1           Whether they say oh, my God, we may have to pay some  
2 money to CEPS here, in other of our negotiations they should  
3 have anticipated. By the way, we have this opportunity to get  
4 money from -- this is something we are developing possibly lead  
5 in the case.

6           THE COURT: All right. Well, I'll continue to  
7 reserve. I'll let you do examination today. I think I am not  
8 yet persuaded the invocation of 10.02 takes it otherwise  
9 outside of the spirit of what the rule in attempting to  
10 encourage settlement discussions would preclude so long as the  
11 letter conveys generally a sense of openness to a discussion,  
12 but I'll take a closer look at 10.02 and think about the  
13 purposes you have just suggested.

14           The first one I think, if I conclude that it is a  
15 demand letter, the purposes you suggested are precisely what  
16 the rule prohibits but I need to think about the second.

17           MR. COLLINS: It also goes to our belief of what are  
18 the proper damages in this case, that Article X sets forth a  
19 cap of a hundred million dollars in breach of contract. Also  
20 we believe requires the incurred losses versus damages what you  
21 say you obtained. That also goes to damages.

22           THE COURT: Okay. Anything else preliminarily before  
23 we bring Mr. Dierks back up?

24           MR. ARMENIO: Not for plaintiff, your Honor.

25           MR. RENARD: No, your Honor.

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1 THE COURT: Would you bring up Mr. Dierks Jorge-Thomas  
2 Dierks, resumes. I'll just remind you that you are under oath.

3 THE WITNESS: Okay.

4 THE COURT: Thank you.

5 MR. RENARD: Your Honor, the first thing I would like  
6 to do is to tender to the witness, the court and plaintiff's  
7 counsel a notebook of exhibits that I intend to inquire about  
8 this morning at the conclusion of Mr. Dierks' testimony.

9 Your Honor, then before I begin the examination, I  
10 would like to tender into evidence the first 7 tabs of this  
11 notebook, and I will identify those for the record. DX 23, CX  
12 41, DX 42, DX 86, JX 95, DX 383 and DX 418.

13 THE COURT: The defendants?

14 MR. ARMENIO: Ah --

15 THE COURT: Sorry. For the plaintiffs?

16 MR. ARMENIO: Lot of these are JX's, and that is what  
17 is making it confusing. If we can have a moment to review it  
18 while counsel examines, and we'll let the court know if we have  
19 any objections? Some of these look unobjectionable and just  
20 identify for the record the proper JX. If we can may have a  
21 moment to go through them?

22 THE COURT: You mean they're not marked as JX, but  
23 they're duplicative of JX stock exhibits already in evidence?

24 MR. ARMENIO: We think some of them are. We are  
25 cross-checking right now.

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1 THE COURT: I appreciate that.

2 MR. ARMENIO: Thank your Honor. We'll get back with  
3 you in a moment.

4 JORGE-THOMAS DIERKS, resumes

5 CROSS EXAMINATION (Continued)

6 BY MR. RENARD:

7 Q. Mr. Dierks, good morning.

8 I would like to begin this morning at a point where we  
9 left off yesterday. Do you have your witness statement in  
10 front of you, sir? We'll be contending with two different  
11 notebooks, but I'll certainly alert you when we're switching  
12 from one to the other. If you take a look at Page 16 Paragraph  
13 50 of your declaration.

14 A. Yes.

15 Q. You state in December 2007 I learned the first time that  
16 the NX4 agreement between 3M and CEPS which was contained in an  
17 earlier pricing convention between 3M and CEPS.

18 My first question is, in December 2007 did you  
19 actually see the NX4 to which you refer there?

20 A. Not in December. I think I saw it first in January.

21 Q. And the NX4 that you referred to there in Paragraph 50, you  
22 say was contained in an earlier pricing convention. What  
23 earlier pricing convention between 3M and CEPS are you  
24 referring to?

25 A. I was referring then to something that I saw that was,



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Dierks - cross

1 according to my understanding, sent from CEPS to us which was  
2 an agreement out of the Year 2005 between 3M and CEPS.

3 Q. In fact, sir, just to, for accuracy and completeness, if we  
4 turn to the next page, Page 17, Paragraph 53, the second  
5 sentence there states, "When I first learned of this NX4, I  
6 thought the price reduction was due in 2008 because the NX4  
7 stated that the reduction would occur three years from the time  
8 of publication, and the convention I saw was from 2005."

9 Is that what you're referring to here?

10 A. Yes.

11 Q. Then you say, "Subsequently, I learned that the NX4 first  
12 appeared in a 2003 convention," and then it continues on.

13 When did you first see the 2003 convention that you  
14 referred to there in the third sentence of Paragraph 53?

15 A. What was the situation was as I said, the, according to my  
16 understanding, as we had these things in-house, it was CEPS to  
17 send us these things.

18 In the document you saw the convention in June of 2005  
19 was the date of 2005, and there was all the paperwork without  
20 the date which was the same, more or less the same wording and  
21 I learned later on this was from 2003, but in what we had  
22 received, we couldn't see that this was already out of 2003.

23 The only date we could see was 2005. So later on I  
24 can't say exactly I heard that this was also signed the same  
25 paper more or less in 2003.

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Dierks - cross

1 Q. When you say you didn't have a convention in-house, are you  
2 referring to the fact that there was a search made within Meda  
3 France and no one could find the conventions that 3M had  
4 transferred, physically delivered to Meda?

5 A. I referred to --

6 MR. ARMENIO: Objection; assumes facts.

7 THE COURT: Could you repeat the question.

8 BY MR. RENARD:

9 Q. Do you know whether or not, Mr. Dierks, 3M physically  
10 delivered the 3M conventions that it had with Meda in all the  
11 prior conventions -- I am sorry. Let me start that again.

12 Do you know whether or not 3M, upon closing of the  
13 transaction on January 2, 2007, physically delivered to Meda  
14 the conventions that 3M had executed with CEPS prior thereto?

15 A. I do not know.

16 Q. But, in any event, I take it some search was conducted to  
17 see if those conventions were, in your words, in-house and the  
18 search turned up nothing?

19 A. What I can only say is when I was informed from Mr.  
20 Traineau that is a CEPS convention signed by 3M and CEPS with  
21 regard to an increased price, increased after three years, but  
22 I learned then that afterwards are the papers had to be sent  
23 from CEPS to us as of that time, at least nobody had them and I  
24 can't say whether someone was asking someone in France to  
25 search this because, as you know, out of the materials I was

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Dierks - cross

1 informed by the regional director who had spoken to the country  
2 managers, so I can't say whether someone asked someone to  
3 search something, whether or not.

4 The only information I received, as I told you, that  
5 they had not had it in hand at that time; and, therefore, they  
6 asked CEPS to send it to them.

7 Q. Did you ever ask Mr. Noel Renaudin, who was your regional  
8 director, or Mr. Christian Senac, who was your country manager,  
9 words to the effect gentleman, when this deal closed, didn't we  
10 get the conventions from 3M? Did you ever ask that?

11 A. For sure.

12 Q. You did?

13 A. At that time what we are speaking now and what you're  
14 referring to, this is the time of December 2007, and at that  
15 moment we learned their situation we have someone in, according  
16 to my understanding, someone in 2007 prior. The first thing I  
17 asked for sure, I want to see this in writing.

18 As I said, according to what I know, nobody had it.  
19 Therefore, they were asking CEPS to send it to them.

20 Q. To whom did you ask that question?

21 A. To Mr. Traineau.

22 Q. What was his response?

23 A. I think I said several times I said it, that nobody had it  
24 in hand; and, therefore, they asked to send it from CEPS to  
25 them. But I can't say whether Mr. Traineau has asked -- at

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Dierks - cross

1 that time the next thing you were referring to Mr. Senac, at  
2 that time Mr. Senac wasn't our country manager any more, it was  
3 Mr. Maupas. I would have -- Maupas -- it would have been sent  
4 to us at any time. At that time in December for me it was not  
5 so much the question where it was, whether we had on file or  
6 not on file. I wanted to know what was written.

7 Q. Since the filing of this lawsuit by Meda against my  
8 clients, to your knowledge, has any search been undertaken to  
9 see whether or not Meda France had in its possession the 3M  
10 conventions?

11 A. Yes.

12 Q. What did that search turn up?

13 A. I was out really knowing in detail. I assume it was  
14 somewhere in our files.

15 Q. But you don't know one way or the other?

16 A. No.

17 Q. Sir, if you will now, let's go back to the new notebook  
18 that I gave you this morning. You can set that aside. I want  
19 you to turn to Tab 17.

20 I just want to ask a predicate question here, and that  
21 is: Is this the document that you first saw that led you to  
22 believe that the NX4 became effective in 2005?

23 A. I can't say the first page I've seen for the first time in  
24 my life. I assume the other pages have been sent, yes.

25 MR. RENARD: We offer in evidence DX 345.

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Dierks - cross

1 MS. BROWN: No objection.

2 THE COURT: Not even to the first page that was never  
3 before seen in his life?

4 MS. BROWN: It is a plaintiff's exhibit, your Honor.

5 THE COURT: That is a good reason. 345, and any  
6 dispute as to the translation?

7 MS. BROWN: No, your Honor. It is the translation we  
8 submitted with the exhibits.

9 THE COURT: Plaintiff's 345 and 345 A are admitted.  
10 (Plaintiffs' Exhibits 345 and 345 A received in  
11 evidence)

12 MR. ARMENIO: While we are discussing exhibits, we do  
13 not have objection to the previously proffered exhibits except  
14 to adjust, so we are all having the same exhibits, four of them  
15 are JX's, and I can just read them into the record if your  
16 Honor would like.

17 THE COURT: Go ahead.

18 MR. ARMENIO: DX 23 is actually JX 19. DX 86 is  
19 actually JX 42. DX 95 is JX 168. And DX 418, that was  
20 proffered as JX 126.

21 THE COURT: So were there any additional --

22 MR. ARMENIO: No additional objections other than  
23 trying to use the same JX's so every witness is referring to  
24 the same thing as much as possible.

25 THE COURT: Can you tell me what the new document

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Dierks - cross

1 numbers were that Mr. Renard mentioned that were not JX  
2 exhibits?

3 MR. ARMENIO: Yes, he used the DX numbers. So he  
4 used, among the exhibits he mentioned, there was DX 23, 86, 95  
5 and 418, and they correspond to in the same order, JX --

6 THE COURT: I understand that point. He had three  
7 additional ones.

8 MR. ARMENIO: No objection to those.

9 THE COURT: Do you know what those were?

10 MR. ARMENIO: The other DX's you were offering, we  
11 don't have an objection to them.

12 MR. RENARD: Okay. DX's that we were offering were DX  
13 23, DX 42, DX 86, DX 383, DX 418.

14 MR. ARMENIO: For your Honor's question, the three  
15 that are uniquely DX's are DX 41, 42 and 383.

16 THE COURT: DX 41, 42 and 383 are admitted.

17 (Defendant Exhibits 41, 42 and 383 received in  
18 evidence)

19 THE COURT: Go ahead, Mr. Renard.

20 BY MR. RENARD:

21 Q. Your Honor, I am sorry to have to ask this question.

22 Then with respect to the other DX's --

23 THE COURT: Those are already admitted because they're  
24 the same as joint exhibits that I admitted this morning.

25 MS. BROWN: The issue is really with the translations.

D1FJMED1

Dierks - cross

1           We had this issue with the JXA translations. If you  
2           were to look at DX 23, which is the very first document in this  
3           binder, you have defendant's translation; but since we were  
4           able to reach agreement on all of the translations except for  
5           the A's that we are still discussing at this point, it makes  
6           sense to use the translations we actually agreed upon rather  
7           than the DX translations.

8           THE COURT: It makes sense. It is messy, okay?

9           So presumably if I've already admitted the  
10          translation, then the translation is in, I don't need to admit  
11          again or a new translation. So we are good to go. And folks  
12          will work a little harder going forward to make sure if we are  
13          going to rely on documents that are already in, we refer to  
14          them by what is already in or otherwise try to streamline the  
15          process.

16         BY MR. RENARD:

17         Q. Mr. Dierks, back to Tab 17 in the binder which is PX 345.  
18         I believe you said you did not recognize the first page of  
19         that. Let me ask you about the third page. Which is in,  
20         pardon my French, entitled (French), correct?

21         A. Sorry?

22         Q. If you answer out loud?

23         A. Yes, I think someone has written those words.

24         Q. At least number one, had you seen this before?

25         A. As I said, I assume that these are the papers that, as I

D1FJMED1

Dierks - cross

1 said, I have asked to get from the CEPS and then brought to my  
2 attention.

3 Q. If you take a look, sir, on the second page of that  
4 supplement to the November 17, 2003 convention, that's dated  
5 October 14th, 2005, correct?

6 A. The last page of the paper?

7 Q. Yes, sir.

8 A. Yes, that is the date. It is 14th of October, 2005 dated.

9 Q. Is this the document to which you refer in your declaration  
10 that you believe from the 2005 date that led you to believe  
11 that the three-year period applicable to NX4 expired in 2008?

12 A. That's correct.

13 Q. Does this document, sir, this two page supplement -- let me  
14 ask this differently.

15 This supplement refers on its face only to Aldara,  
16 correct?

17 A. No. I understand that the first page refers to Flecaine  
18 because it is written Flecaine.

19 Q. I am talking about this document entitled Avenant or  
20 supplement. That two-page document refers only to Aldara?

21 A. No. As I said, I see three pages in a row.

22 MS. BROWN: Your Honor, I want to state an objection.  
23 He is referring to two pages. The witness is testifying about  
24 the entire document. I don't think this line of questioning is  
25 very fair since we are taking these two pages out of context.



D1FJMED1

Dierks - cross

1 THE COURT: At the least it is not clear. I am having  
2 trouble knowing what precisely; and, therefore, the record  
3 surely won't show what it is that we're exactly talking about.

4 Mr. Renard, why don't you make it clear.

5 BY MR. RENARD:

6 Q. Is it your understanding, Mr. Dierks, that the second page  
7 of this Exhibit PX 345, which is entitled "Convention," that  
8 that page, the third page and the fourth page were all one  
9 document executed in 2005?

10 A. My understanding that I will repeat, we have asked CEPS  
11 with regard to what came up that there is a convention about  
12 the price decrease and that they have sent us these pages that  
13 are in front of me and seem to be the same, and as you see, a  
14 lot of boxes are mentioned 2005. So use Avenant (French) if  
15 you look past this, you will see Avenant and -- (French) you  
16 see all the parts there written in 2005, and honestly, the  
17 point is, is the following different?

18 We were speaking about Flecaine, so the look on this  
19 was with regard to Flecaine. What is mentioned on the first  
20 page is with regard to the price decreases after three years.

21 Q. My question, sir, is did you understand that this  
22 convention which is the second page of 345 --

23 THE COURT: You're asking about what is Bates at the  
24 bottom as Meda 00201245.

25 MR. RENARD: 44, your Honor, whether that --

D1FJMED1

Dierks - cross

1 THE COURT: That is what you're calling the second  
2 page?

3 MR. RENARD: The second page of the exhibit, your  
4 Honor. I'll be more precise just so we're clear.

5 BY MR. RENARD:

6 Q. Is it your understanding, Mr. Dierks, that the convention  
7 that ends with the Bates number bottom-right-hand corner 44,  
8 included the pages that are marked 45 and 46?

9 A. What was the question?

10 Q. Did you understand that the document entitled "Convention"  
11 that ends in the No. 44 included the pages that are marked 45  
12 and 46?

13 A. I understood at that time it was one document.

14 Q. You understand differently today, though, don't you?

15 A. To what? No, today I understand at that time I  
16 understood -- I understand also today that the document that  
17 has been sent to us at that time, I saw this one document.

18 Q. Sir, do you understand today that the convention, Page 44,  
19 was a document that was executed in March of 2003?

20 A. Today I know that there was already a convention started in  
21 the Year 2003.

22 Q. And, therefore, do you also understand that the document  
23 that is made up of pages 45 and 46 was a different document  
24 that was executed in October 2005 that applied only to Aldara?

25 A. No. I understand that that was a document which was

D1FJMED1

Dierks - cross

1 already signed in 2003, and there is the same document signed  
2 in 2005. That is my understanding.

3 Q. Let's go back to the first tab.

4 THE COURT: I just want to make sure I understand your  
5 understanding. We're looking at PX 345 and the pages that  
6 begin Meda 201244 and then 20145 and 201246.

7 You said, I understand, that that was a document which  
8 was already signed in 2003, and there is the same document  
9 signed in 2005. I don't understand what you mean.

10 THE WITNESS: At that time when I asked for the  
11 document to see, this was signed, and as you see, out of the  
12 last page it was signed in 2005. So I was assuming this is a  
13 document that is signed in 2005. If you go into the text, you  
14 see about three years from then. I was assuming three years  
15 from 2005 would mean 2008.

16 I have that understanding in 2008 we have to bring the  
17 genetic to the market which --

18 THE COURT: I understand that.

19 THE WITNESS: -- afterwards I learned that the same  
20 document with the same text as already was signed in 2003, but  
21 then I learned afterwards, but that I learned afterwards.

22 BY MR. RENARD:

23 Q. Mr. Dierks, go to Tab 1 which is --

24 A. Which of the books?

25 Q. -- Tab 1 in the book we are still in.

D1FJMED1

Dierks - cross

1 A. Okay.

2 Q. Which is JX 19. I'll ask you, sir, if, number one, had you  
3 ever seen this before? It is a convention, dated March 10,  
4 2003?

5 A. No.

6 Q. Tell me, sir, if the first page of JX 19 appears to be the  
7 same page, going again to Tab 17 --

8 THE COURT: What is JX?

9 THE WITNESS: I don't know why we are not --

10 MR. RENARD: JX 19, your Honor, is the JX equivalent  
11 of DX 23, Tab 1.

12 THE COURT: Tab 1 in the book?

13 MR. RENARD: Yes.

14 THE COURT: Which is marked here as DX 23.

15 MR. RENARD: Yes, your Honor.

16 THE COURT: But has been admitted as JX --

17 MR. RENARD: 19.

18 THE COURT: -- 19, okay?

19 MR. RENARD: I will make sure henceforth, your Honor,  
20 I will make all of that clear on these particular documents.

21 BY MR. RENARD:

22 Q. Does that first page of that exhibit on Tab 1, Mr. Dierks,  
23 appear to be the same page we were looking at at Tab 17, which  
24 I Bates numbered 44?

25 A. It seems to be the same text.

D1FJMED1

Dierks - cross

1 Q. Turn, sir, to Tab 2 in that same book which is PX 41. Does  
2 that appear to be a convention executed between 3M Sante and  
3 CEPS, dated November 17, 2003?

4 Does it appear to be a convention dated November 17,  
5 2003 between 3M Sante and CEPS?

6 A. I don't know what you're talking about.

7 Q. You have never seen this document before?

8 A. No.

9 Q. Did anyone ever tell you, Mr. Dierks, that after March 10,  
10 2003, that 3M Sante and CEPS executed a convention, dated  
11 November 17, 2003, that did not have an NX4 related to  
12 Flecaine?

13 A. No.

14 Q. Turn, sir, if you will, to Tab 5, which is JX 95.

15 Does that appear to be a supplement to a convention?  
16 And let me make this very specific. Does this appear to be a  
17 document, dated September 15, 2006, that is titled a supplement  
18 to a convention, dated November 17, 2003?

19 A. This is a question?

20 Q. Yes, sir. Is that what it appears to be?

21 A. Yes, that is what is written there.

22 Q. Had you ever seen it before?

23 A. No.

24 Q. Can you then tell me, sir, what documents executed between  
25 CEPS and 3M Sante that you saw prior to this lawsuit being

D1FJMED1

Dierks - cross

1 filed that you believe indicates that 3M Sante or 3M was under  
2 some obligation to CEPS with respect to either putting a  
3 generic on the market or putting pricing for Flecaine LP at a  
4 generic level?

5 A. Think you express this quite nice. If you say  
6 "obligation," I think there is a signed contract between CEPS  
7 and 3M, and this is, of course, on this paper you have shown  
8 from the 10th of March 2003 that notes there is an obligation,  
9 that is an obligation to do so.

10 Because two parties have signed this and not have CEPS  
11 perhaps eventually we could do this or something like this, and  
12 it is signed. I think to understand a little bit what you want  
13 to express here, a signed agreement has not to be shown up in  
14 each CEPS agreement new. A signed agreement states in life  
15 also if it is not mentioned each year in this general annual  
16 renew-ment of CEPS agreement.

17 So meaning that what you mean that you have an  
18 agreement -- no. If you sign an agreement on the 10th of March  
19 and you sign another agreement to a totally other thing on the  
20 17th of March, it doesn't mean that the 10th of March agreement  
21 is not in form.

22 MR. RENARD: I will object to everything after the  
23 identification of the March 3 document as being the document he  
24 was referring to.

25 THE COURT: You're objecting on what ground?

D1FJMED1

Dierks - cross

1 MR. RENARD: Your Honor, my question was can you  
2 identify what documents that he saw prior to the lawsuit being  
3 filed that he believed indicated an agreement between 3M Sante  
4 and CEPS providing for the introduction of the generic or  
5 generic equivalent price. He said --

6 THE COURT: I got it.

7 MS. BROWN: Your Honor, his answer was he was  
8 describing exactly the document that he saw that in his mind  
9 that led him to believe there is an agreement between those  
10 parties and had that obligation. The witness has directly  
11 answered the question.

12 THE COURT: There was other explanatory information  
13 included. I will sustain the objection with respect to that.

14 BY MR. RENARD:

15 Q. Mr. Dierks, let me follow up on that.

16 Did you see any documents between CEPS and 3M Sante  
17 relating to Flecaine LP prior to the lawsuit being filed other  
18 than the first tab which is JX 19?

19 A. Can you repeat this because I think I have seen that what  
20 has been sent from CEPS to us.

21 Q. Which we had already looked at. Is that correct?

22 A. Yes.

23 Q. Other than that, had you seen any documents executed  
24 between 3M Sante and CEPS relating to Flecaine LP prior to the  
25 lawsuit being filed?

D1FJMED1

Dierks - cross

1 A. Honestly, I don't understand your question. I think  
2 that --

3 THE COURT: Let him clarify. If you don't understand,  
4 let him clarify.

5 BY MR. RENARD:

6 Q. I want to know because I think it may be important what  
7 documents you saw prior to the lawsuit being filed that  
8 purported to be conventions or amendments to conventions  
9 between 3M Sante and CEPS as it relates to Flecaine LP, and my  
10 question is simply this:

11 Other than what we've already discussed which is Tab  
12 17, PX 345, were there any other documents that meet that  
13 definition?

14 A. No. I have seen this convention between Flecaine, 3M and  
15 CEPS that we know now is dated out of the Year 2003.

16 Q. Thank you.

17 Let's then turn, Mr. Dierks, to Tab 6.

18 THE COURT: Just for my clarity, what we were just  
19 looking at, at Tab 5 -- no. Yes, Tab 5, which is JX 95, you  
20 haven't seen this?

21 THE WITNESS: No.

22 THE COURT: Does that surprise you?

23 THE WITNESS: No, because if I may say so, what you  
24 have in France is a little bit different than in other  
25 countries, is that in France the government or governmental



D1FJMED1

Dierks - cross

1 body CEPS and the companies try to come to an agreement about  
2 reimburse price. Then each year part of it is renewed. Each  
3 year the list of prices are renewed, but this is -- the prices  
4 are renewed. There is no formation because it is a published  
5 price, only each year renewed.

6 THE COURT: Don't you need to look at it to know if  
7 there is additional information?

8 THE WITNESS: No, only -- yes, if there would be  
9 additional information. If there would be additional  
10 information, it is not me who has to look at it.

11 If there is additional information that would have  
12 consequences on our prices, then someone would have to tell me.  
13 It is not me who has to look at them. We have a country  
14 manager, we have a country organization for this. It is not me  
15 as chief operating officer who has to read the CEPS  
16 conventions.

17 What would have been the case, let me say --

18 THE COURT: Would you have directed somebody,  
19 especially after the issues that predicated this litigation,  
20 sir, let's make sure we know what is in every CEPS agreement  
21 pertaining to Tambocor?

22 THE WITNESS: I think, yes, for sure then as we said,  
23 we tried to look at what is in our possession as we got from  
24 the CEPS convention. The CEPS conventions we got the Flecaine  
25 to see ones that is from the Year 2003, where CEPS and 3M had

D1FJMED1

Dierks - cross

1 agreed upon, we put the product into the market, we get this  
2 reimbursed price, and in three years either there is a generic  
3 on the market or if there is no generic on the market, then you  
4 have to reduce the price to the price of the generic.

5 Then at that time because it is even a mentioned a  
6 percentage, but at that time the percentage was in line 50  
7 percent. That states a life. In the normal CEPS convention,  
8 you have the list again with the reimbursed price, there is  
9 nothing, nothing knew.

10 THE COURT: Your assumption would be there is  
11 something new unless somebody --

12 THE WITNESS: For sure informs me there is something  
13 new. As I said, I am the chief operating officer. I would  
14 have been informed, let's say, where there would have been  
15 major changes to anything.

16 THE COURT: And you would be informed by your team?

17 THE WITNESS: Then normally there is a country manager  
18 that either comes directly to the regional director, me or the  
19 regional director, then the regional director informs me. That  
20 is all the ways of letting me know of things of importance.

21 THE COURT: In the absence of what we know now, your  
22 team are looking at these documents and somebody came to you  
23 and said I have a CEPS convention on Flecaine, do you want to  
24 see it, boss, what would you say?

25 THE WITNESS: I would, without the situation or in --

D1FJMED1

Dierks - cross

1 THE COURT: No. In the situation?

2 THE WITNESS: No. Then only as I said because  
3 normally the CEPS convention meets, that you agree on a price  
4 and it is for five years. Nevertheless, each year it is  
5 re-mentioned. It is the same for five years. It is  
6 re-mentioned the same price.

7 After five years then they look into the price and  
8 then the asking price, it might be the price changes. Then I  
9 would not be expected to be informed. When it is there, I  
10 would have been expected in advance because as long as we knew,  
11 you also have to negotiate the price. Then they would come to  
12 me.

13 THE COURT: If you were told I've got a CEPS  
14 convention, that wouldn't without more information flag  
15 something for you?

16 THE WITNESS: Not at all. The CEPS convention meets  
17 only that the prices are written that we know. That is the  
18 difference, let me say, in France. In most other European  
19 countries, you also have to ask for a price and then this price  
20 is given and it is published.

21 THE COURT: Obviously, CEPS conventions can do other  
22 things?

23 THE WITNESS: Yes.

24 THE COURT: So why would you assume, if someone on  
25 your staff said I've got a CEPS convention here, do you want to

D1FJMED1

Dierks - cross

1 see it, that it would just be a continuation of the published  
2 price?

3 THE WITNESS: No. If they ask me whether -- they  
4 would come whether I want to see it. Come and say listen, we  
5 have your CEPS convention and there's something new in it. But  
6 the pure CEPS convention is only mentioning the same prices  
7 which are agreed upon for five years. They would not come and  
8 say listen, we received a new CEPS convention, mentioning this  
9 annual renewal that you have each year with the same price.

10 Only if there is something new, let me say, as set now  
11 they want to reduce the price or whatever, but normally that  
12 does not happen because for five years it is accepted.

13 Something else gets you into trouble. We have a  
14 product Aldara which is a different indication. Where we have  
15 reimbursement or we have reimbursement for two indications  
16 which have general awards and kind of superficial price known  
17 which is the -- we were now, we had also wanted now to sell it,  
18 another indication. For this then we have to negotiate.

19 Then for sure I am informed by them and they come and  
20 say, for example, it is here CEPS, CEPS is willing us to give  
21 this indication, but they want to have this what we discussed  
22 yesterday, this price volume deal. So we get this till this  
23 volume, this unit, and above we have to pay rebate or something  
24 like this. Then they will come to me.

25 THE COURT: That negotiation would go into the CEPS

D1FJMED1

Dierks - cross

1 agreement ultimately?

2 THE WITNESS: Yes. Then they would come not because  
3 the CEPS was not something that comes as a surprise. There are  
4 negotiations before, and they would negotiate in advance with  
5 me and then they would, afterwards come to me and say this is  
6 the result of it.

7 THE COURT: Thank you.

8 (Continued on next page)

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DlfQmed2

Dierks - cross

1 BY MR. RENARD: (Continued)

2 Q. Mr. Dierks, if you will, go to 1017 again that we looked at  
3 previously. Look at the pages marked 4-5 and 4-6, the document  
4 that's entitled at the top Supplement to the November 17, 2003  
5 Convention?

6 THE COURT: Remind me what tab we're under.

7 MR. RENARD: 17, your Honor, which is PX-345.

8 THE COURT: Thank you.

9 Q. When you saw that, Mr. Dierks, and saw that this purported  
10 to be a supplement to a convention dated November 17, 2003, did  
11 you ask anyone even -- did you ask CEPS to get a copy of that  
12 November 17, 2003 convention?

13 A. Me personally, no.

14 Q. Yes, sir. When you saw that -- and by the way, when this  
15 was delivered to you in the context of what supposedly was news  
16 from CEPS about this, you took it seriously and you focused on  
17 it, would that be fair to say?

18 A. On the Aldara question or the Flecaine question?

19 Q. When CEPS brought these documents that make up PX-345 to  
20 your attention, when it was ultimately directed to your  
21 attention, it's something you took seriously and spent some  
22 time focusing on. Would that be fair to say?

23 A. With regard to Flecaine, yes.

24 Q. When you saw this document here pages 4-5, 4-6 entitled  
25 Supplement to a November 17, 2003 Convention, did you think to

DlfQmed2

Dierks - cross

1 ask anyone, "You know what, I think I might like to see that  
2 convention"?

3 MS. BROWN: Your Honor, that's been asked and  
4 answered.

5 THE COURT: Go ahead.

6 A. You know, again, we were speaking with Flecaine. What you  
7 are referring now are out of the document two pages or one page  
8 which is related to Aldara, which was not the question. We  
9 were not discussing at that point what happens with Aldara. We  
10 asked when I had received the information, we will have to  
11 reduce the price of Flecaine at 50 percent. So the four --

12 THE COURT: Wait a second. I thought you earlier said  
13 that you read these pages together as a single document?

14 THE WITNESS: Yes.

15 THE COURT: So the question is, when you saw this  
16 reference, whatever it is, on PX-345 what's based as 202145,  
17 and it mentions a November 17, 2003 convention --

18 THE WITNESS: Yes.

19 THE COURT: The question is whether you asked about  
20 that convention.

21 THE WITNESS: What I want to explain is on the first  
22 page that I saw was this convention, an agreement with regard  
23 to Flecaine. On the second page is not meant -- this is  
24 dealing with Aldara. For sure I saw the whole document as one,  
25 as there's only one page signed and that's the last one, and

DlfQmed2

Dierks - cross

1 that was on 2005 but for sure I was at that time interested in  
2 what was said according with regard to Aldara. I was  
3 interested --

4 THE COURT: So the answer is no?

5 THE WITNESS: No.

6 THE COURT: You understood it to pertain to Aldara.

7 THE WITNESS: Yes.

8 THE COURT: And you were interested in Flecaine.

9 THE WITNESS: Exactly. Which was mentioned on the  
10 first page. But as I have said before, at that time, I thought  
11 all these pages are related to a date of 2005.

12 Q. When you received, I take it directly or indirectly, from  
13 CEPS these pages that make up PX-345, did you ask anyone to  
14 follow-up with CEPS and with words to the effect of: "Is this  
15 all there is or are there additional documents relating to  
16 conventions between 3M and CEPS relating to Flecaine LP"?

17 A. For sure I was asking a question a little bit like this, is  
18 this everything with regard to Flecaine.

19 Q. And what was the answer that was ultimately given to you  
20 that there was one?

21 A. That this is the convention that is relative with regard to  
22 Flecaine.

23 Q. And the "this," can you identify that by the page number?

24 A. Yeah, the ending here is 244.

25 Q. And to your knowledge, that's the only thing that CEPS ever



DlfQmed2

Dierks - cross

1 provided Meda relating to conventions between 3M Santé and  
2 CEPS?

3 A. As I said, I was asking with regard to Flecaine, and,  
4 according to my understanding, that was convention -- the only  
5 convention relative with regard to Flecaine. I don't know  
6 whether they have sent other materials or something like this  
7 not related to Flecaine.

8 Q. Now, let's look at Tab 6 in the same binder, Mr. Dierks,  
9 which is DX-383. Does this appear to be a letter from  
10 Christian Senac, who was country manager for Meda France, to  
11 Mr. Renaudin, the chairman of CEPS, enclosing a signed  
12 convention dated September 28, 2007?

13 A. Yes, seems to be.

14 Q. Sir, does this appear to have some handwritten -- and I'm  
15 looking at the original document, the original French language  
16 document. Does it appear to have some handwritten  
17 modifications to this -- handwritten portions to this  
18 convention, particularly on pages -- I think there are some,  
19 frankly, on every page of the Annex-3. Do you see that?

20 A. Yep.

21 Q. Had you ever seen this convention --

22 A. No.

23 Q. -- before? Is today the first time you've seen it?

24 A. Yes.

25 Q. Before today, when do you believe the first convention was

DlfQmed2

Dierks - cross

1 that was executed between Meda France and CEPS relating to  
2 Flecaine LP?

3 A. Normally that can only be after we had acquired the product  
4 and have -- the marketing authorization has been transferred to  
5 us.

6 Q. That stands to reason, and my question is a little  
7 different. When in time, by year or month or as precise as you  
8 can be, when do you understand was the first convention that  
9 Meda France entered into with CEPS relating to Flecaine LP?

10 A. As I said, that must be after we entered -- the marketing  
11 approval has been transferred to us. If you see the timing of  
12 the deal, I think the closing was in January 2007. The  
13 transfer of the marketing approval takes roughly half a year.  
14 That must be later than this.

15 Q. Can you be any more specific than the first marketing --  
16 well --

17 A. No.

18 Q. Let me ask this: Prior to today and seeing this DX-383,  
19 did you even know whether or not Meda France had executed a  
20 convention with CEPS relating to Flecaine LP?

21 A. Each year for all reimbursed products, the company is  
22 signing a convention with CEPS, and that you have to do for all  
23 your reimbursed products. That means as soon as we get -- not  
24 as the owner, but as soon as the marking authorization has been  
25 transferred to us, this product will be part of the convention

DlfQmed2

Dierks - cross

1 that signs with CEPS.

2 Q. Mr. Dierks, my question is a simple one, and I'm not  
3 suggesting you are trying to avoid it, but if you would focus  
4 on my question. Were you aware prior to today that Meda France  
5 had actually entered into a convention with CEPS relating to  
6 Flecaine LP after the acquisition of the Flecaine LP rights?

7 A. Depends what you mean "were you aware." As I said, as you  
8 have to sign this each year, I am aware that each year we sign  
9 such a thing for all reimbursed products that we have. As  
10 Flecaine is a reimbursed product, as soon as marketing  
11 authority is transferred to us, I'm aware, let me say, that  
12 this will be in the CEPS convention between the company and  
13 CEPS. That does not mean that I have seen it with my eyes.

14 Q. Is it fair then to say that you assumed --

15 A. Yes.

16 Q. -- that there was such a contract, but you did not know to  
17 a certainty that one existed?

18 A. Yes, I know with a certainty that one exists because if  
19 none would exist, we would not be allowed to sell the product  
20 as a reimbursed price in France.

21 Q. What happened then, sir, between the date of acquisition  
22 and apparently this September 27 -- 28, 2007 convention, which  
23 is DX-383? Did Meda France have authorization to sell Flecaine  
24 LP given what you just said?

25 A. Yes.

DlfQmed2

Dierks - cross

1 Q. Under what rights?

2 A. Under the rights coming out of sales and purchase  
3 agreement.

4 THE COURT: Sales and purchase.

5 A. Because you have to see one thing; when you acquire the  
6 business, you sign contract, but nevertheless the marketing  
7 approval has to be transferred to your company, and that is a  
8 legal process, a regulatory process. That is not at the same  
9 day when you have signed or closed. That takes time.  
10 Normally, that depends on the country. In a country like  
11 France, normally that takes time, roughly half a year. After,  
12 only after that, you are in the possession, you as the  
13 so-called marketing authorization holder, and then it's you who  
14 has to do the legal things with CEPS and all.

15 Q. Sir, turn to Tab 7, which is marked DX-418, but I believe  
16 was also JX-126. Does this appear to be a letter from  
17 Mr. Maupas, director general of Meda France to Mr. Renaudin,  
18 dated September 17, 2008 attaching an executed supplement to a  
19 convention dated September 28, 2007?

20 A. Yes.

21 Q. Prior to today, had you ever seen this document?

22 A. Yes.

23 Q. When was the first time you saw it?

24 A. You know, in the year 2008 then we had -- after we had  
25 become knowledgeable of this CEPS convention, as you know,

DlfQmed2

Dierks - cross

1 there was in-house a lot of discussion about this because, as I  
2 said, it was written that normally you have to reduce a price  
3 by 50 percent, and we tried to speak with CEPS saying, listen,  
4 we have not heard about it. And so it was a whole process. In  
5 that period a lot of different proposals from CEPS came on the  
6 table. So, finally this was in the outcome that we have this  
7 two-step price reduction: First in November 2008 and the  
8 second in September 2009 -- in October 2009, and this was  
9 signed down in the convention. So it must be somewhere after  
10 this has been signed.

11 Q. You first saw this document after it was signed?

12 A. After it was signed.

13 Q. Yes, sir. That's your testimony, correct?

14 A. I'd say so yes. I knew what it was in before because this  
15 was discussed, but this signed version I can only see after it  
16 was signed, otherwise it would not be signed.

17 Q. Let me ask you, sir, when you saw this document sometime  
18 after September 17, 2008, and you saw that it was entitled a  
19 Supplement to a Convention Dated September 28, 2007, did you  
20 ever ask anyone, "You know what," words to the effect, "I  
21 wouldn't mind taking a look at what that September 28, 2007  
22 agreement is that we're modifying here"?

23 A. I think you have the wrong estimation on how the discussion  
24 about this document was going on through the whole year because  
25 it's not that, oh, suddenly we looked, and there's a convention

DlfQmed2

Dierks - cross

1 in 2007. As I said, we had several negotiations with CEPS --  
2 not me personally, but the people in France -- and that was the  
3 final outcome.

4 Q. Do you remember my question, Mr. Dierks? Did you ask  
5 anyone when you saw this document to see the September 28, 2007  
6 convention that's referred to there? That was simply my  
7 question. Did you?

8 A. No, because I did not have to see it too because this was  
9 the last convention I assumed we had signed with CEPS as the  
10 company Meda.

11 Q. Sir, in your witness statement, your declaration in  
12 paragraph 43, you state, "I recall specifically looking at  
13 documents" -- let me back up. I'll give you a chance to get  
14 there. It's page 13, paragraph 43. It begins, "In addition to  
15 the OM" -- which I believe is a reference to the offering  
16 memorandum -- "and the management presentation" -- which I  
17 believe is described previously in your declaration, you say --  
18 "electronic data room was made available to Meda. Meda  
19 employees, including myself and outside legal counsel, would  
20 review documents in the 3M data room. I recall specifically  
21 looking at documents related to marketing and sales information  
22 including product relevant information. In the data room, I  
23 did not come across any information related to a signed  
24 agreement in France mandating either a price reduction to  
25 Tambocor CR or the introduction of a generic version of

DlfQmed2

Dierks - cross

1 Tambocor CR and no such agreement was ever brought to my  
2 attention."

3 First of all, Mr. Dierks, to expand on an area that we  
4 touched upon yesterday, were there any conventions relating to  
5 any 3M pharmaceuticals contained in the data room?

6 A. Not that had been brought to my attention, so I assume no.

7 Q. Without getting into any detail about the pharmaceutical  
8 pricing, public pharmaceutical pricing policies of other  
9 European countries, are there documents similar to conventions  
10 that are used in the other European countries that have a  
11 regulatory system which entails approval of reimbursement  
12 prices?

13 A. Not like the convention in France.

14 Q. But are there documents that are issued or published by the  
15 regulatory authorities in those countries that set those  
16 prices?

17 A. That might be.

18 Q. You're not familiar though with any other European country  
19 that has such a system?

20 A. As I said, the system in France is a little bit of a  
21 special one. In each country, they have their own system that  
22 is always a different one. There are countries where you have  
23 no system at all where you have to ask for reimbursement, and  
24 you have countries where you have; but normally this is more  
25 than as a kind of declaration of one side, and not like here

DlfQmed2

Dierks - cross

1 convention which is signed between two companies.

2 Q. When you say you looked at documents in the 3M data room,  
3 do you recall there being an index?

4 A. Yes.

5 Q. Kind of a file and subfile listing that at least organized  
6 by general topic matter the materials in the data room?

7 A. As I said yesterday already when you asked me about the  
8 data room and my overview, I told you that exactly that is I  
9 looked into to see a little bit how the data room is  
10 structured.

11 Q. Yes, sir. Turn to Tab 9, which is PX-336.

12 A. Which binder now?

13 Q. This is the binder of additional exhibits. You can set  
14 aside your declaration. I think we're done with your  
15 declaration and its attached exhibits.

16 A. OK.

17 Q. Tab 9, which is PX-336?

18 A. Yes.

19 Q. Is this the index that you understand of the documents in  
20 the data room?

21 A. I think so.

22 MR. RENARD: Your Honor, we would move the admission  
23 of PX-336 into evidence.

24 MS. BROWN: No objection, your Honor.

25 THE COURT: PX-336 is admitted.



DlfQmed2

Dierks - cross

1 (Plaintiff's Exhibit 336 received in evidence)

2 Q. Interesting point, I note, Mr. Dierks, there is a date at  
3 the bottom of this of 5/2/2007. Do you see that in the bottom  
4 right-hand corner?

5 A. Yes.

6 Q. It's correct, is it not, that in May of 2007 Meda asked for  
7 a copy, an electronic copy of all the documents that had been  
8 in the data room?

9 A. No idea.

10 Q. Sir, if you will turn to the page of PX-336, and maybe the  
11 easiest way to do it is look in the upper right-hand corner,  
12 the page that says 7 of 29?

13 A. Yes.

14 Q. Do you see an entry there about halfway down a little more  
15 than halfway down there is a category entitled "D422 flecainide  
16 (Tambocor)"?

17 A. Yes.

18 Q. And the second -- if you go down two lines from that,  
19 there's an entry that says: "The flecainide EU status report."  
20 Do you see that?

21 A. Yes.

22 Q. Do you understand that 59 off to the side references the  
23 number of pages for that particular document?

24 A. No idea.

25 Q. Turn, sir, to Tab 10, which is DX-167. This is entitled

DlfQmed2

Dierks - cross

1 Regulatory Product Report Dated May 2006, 59 pages in length.

2 And I will ask, is this one of the documents that you reviewed  
3 that you understood came from the data room?

4 A. First of all, I have not viewed it. Secondly, it would not  
5 furthermore have been my task to review or view it. And,  
6 thirdly, I don't know where it's come from, but I assume -- I  
7 have no reason not to believe you when you tell me it comes  
8 from the data room.

9 MR. RENARD: Your Honor, we would move the admission  
10 of DX-167 into evidence.

11 MS. BROWN: Your Honor, we don't have an objection to  
12 the exhibit, although we don't think there's a foundation laid  
13 for the fact that it would actually have been in the data room.

14 THE COURT: That it would actually --

15 MS. BROWN: Have been in the data room.

16 THE COURT: OK. I think that's right. So, you  
17 consent to its admission, but you want to note that it hasn't  
18 been established to have been entered into the data room?

19 MS. BROWN: Exactly.

20 THE COURT: Any question that that would be assuming a  
21 fact not in evidence? All right, so DX-167 is admitted.

22 (Defendant's Exhibit 167 received in evidence)

23 Q. Mr. Dierks, then if we could go back to tab 6, which is the  
24 index of the data room

25 A. Tab 6 is a letter from --

DlfQmed2

Dierks - cross

1 Q. I'm sorry, tab 9.

2 A. OK. If we turn to the page that's marked page 24 of 29.

3 A. Yes.

4 Q. This is PX-336. Do you see a little more than halfway down  
5 that particular page, there is a file category entitled  
6 marketing plans?

7 A. Yes.

8 Q. Do you see the sixth entry down is a file entitled France  
9 Marketing Plan Summary 2006?

10 A. Yes.

11 Q. It says 3, and that says 15 off to the side, correct?

12 A. Yes.

13 Q. Let me turn your attention, sir, to Tab 11, which is  
14 DX-367, which is a 15-page document entitled Marketing Plan,  
15 and I'll ask whether you've ever seen that before?

16 A. I can't tell you I've seen exactly this document or other  
17 ones as we had a lot of country presentations from the people  
18 where these things had been presented by. I don't know whether  
19 I've seen this document or not.

20 Q. When you said in your witness statement that you looked  
21 specifically at documents related to marketing and sales  
22 information from the data room --

23 A. No, not from the data room. It's overall my -- my task was  
24 to look into marketing and sales document organization, not  
25 only in the data room but overall in the whole due diligence

DlfQmed2

Dierks - cross

1 process.

2 Q. Did you charge anyone with the tasks, anyone who was  
3 actually spending time in the data room, appreciable time, did  
4 you charge anyone with the task of words to the effect, "Bring  
5 me anything relating to the marketing and sales of Flecaine  
6 LP"?

7 A. No. Normally if you go into the data room, we are looking  
8 for the following: Either information that has not been  
9 revealed up to that point in the offering memorandum, in the  
10 management presentations or in breakout sessions or which are  
11 contradictory to that what we have seen or have.

12 MR. RENARD: Your Honor, I object to that as  
13 non-responsive.

14 Mr. Dierks, if you will, focus on my question.

15 THE COURT: Mr. Dierks, I'll let you explain, but you  
16 have to first answer the question.

17 THE WITNESS: OK.

18 Q. Did you ask anyone who was actually spending time in the  
19 data room to bring you any significant, important documents  
20 relating to the marketing and sales of Flecaine LP?

21 A. I was asking -- sorry -- I was asking them to bring me  
22 documents, as you said important, yes, important documents that  
23 either would be contradictory to what we have heard up to now  
24 or which would have -- where we would not have seen information  
25 yet.

DlfQmed2

Dierks - cross

1 Q. Did you put that request in writing wherein if you  
2 requested anyone bring me --

3 A. No.

4 Q. -- anything that's contradictory in the data room or in the  
5 offering memorandum?

6 A. No, I did not.

7 Q. Who did you task with that job?

8 A. We had several legal consultants who were looking into  
9 these things. We had in-house people who were looking into  
10 these things.

11 Q. Did those individuals whom you tasked with that job report  
12 back to you that pricing negotiations for Tambocor CR were  
13 ongoing in France?

14 A. No.

15 Q. Was that something that was consistent with or  
16 contradictory from what was stated in the offering memorandum,  
17 the fact that there were ongoing negotiations between 3M Santé  
18 and CEPS?

19 A. In the offering memorandum, I think the management  
20 presentations, there was nothing said about ongoing pricing  
21 negotiations with CEPS.

22 Q. Did those same people report back to you that the  
23 registrations for Flecaine LP were expiring as of December 18,  
24 2001?

25 A. Whether the registration was expiring in 2001?

DlfQmed2

Dierks - cross

1 Q. Yes, sir.

2 A. No, I had not heard that they are expiring in 2001.

3 Q. I'm sorry. If I said '01, I misspoke. Did those people  
4 report back to you that the registrations for Flecaine LP were  
5 set to expire in 2006?

6 A. The registration was expiring 2006, no, that I've not  
7 heard.

8 Q. Is that something that you knew prior to the execution of  
9 the acquisition agreement in November of 2006, that the  
10 five-year registrations for Flecaine LP were set to expire in  
11 2006?

12 A. I think your question is wrong, I'm sorry to say, because  
13 there is no expiring of the registration after five years. So,  
14 what you have is, first of all, you have a registration renewal  
15 after five years, and that's normal in all European countries,  
16 but there's no expiration of registration in 2006.

17 Q. With that amendment, were you aware that the registrations  
18 for Flecaine LP were set to be renewed in 2006?

19 A. Me personally, no, because I was not looking into the  
20 registration files. I was not a person who was looking into  
21 and checking whether all registration files were in line with  
22 the laws.

23 Q. Turn, sir, if you will, to Tab 12 which is DX-299?

24 A. Yep.

25 Q. Does this appear to you to be an email chain ending with an

DlfQmed2

Dierks - cross

1 email from you to Mr. Senac dated November 29, 2006 and an  
2 attached presentation?

3 A. Yes.

4 MR. RENARD: Your Honor, Tab 12, which is DX-299, we  
5 would move into evidence.

6 MS. BROWN: No objection, your Honor.

7 THE COURT: DX-299 is admitted. Is this the same  
8 slide presentation or different? Oh, yes. Go ahead.

9 (Defendant's Exhibit 299 received in evidence)

10 Q. Mr. Dierks, you refer in the email at the top of DX-299 to  
11 the fact that the presentation that is attached is one that  
12 Benoit Traineau did yesterday in Stockholm?

13 A. Yes.

14 Q. Was there a meeting on November 28, 2006 among you, and  
15 Mr. Traineau and perhaps others in Stockholm, Sweden?

16 A. Yes, we had invited some senior management person from 3M  
17 to come to Solna mainly for the purpose to find out how they  
18 are, what they are, what kind of further possibilities for them  
19 we saw in our company.

20 Q. And, sir, if you -- by the way, did you yourself review the  
21 presentation that you attached to this email?

22 A. You mean reading it when it was sent to me?

23 Q. Yes, sir.

24 A. No. I said what I normally do, because this was a  
25 presentation where it was said it was shown yesterday to you,

DlfQmed2

Dierks - cross

1 and then I opened the presentation, and I see is this the same  
2 what I've seen yesterday or not. So I look to the first tab  
3 and this was the case, so I would not review again.

4 Q. And, sir, if you'll take a look at the page of the  
5 presentation that ends with the numbers 298. It's about  
6 halfway through the presentation.

7 A. 298. Yep.

8 Q. This slide is entitled Three Critical Issues --

9 A. Yes.

10 Q. -- Succeed the Integration, the first. The second being  
11 Managing Health Authorities' Price Pressure. And the third  
12 being Tambocor CR Cycle Life Management.

13 Were subjects numbers two and three discussed during  
14 the meeting that you attended with Mr. Traineau on November 28,  
15 2006?

16 A. Depends what you mean by discussed. He was making this  
17 presentation.

18 Q. Were these subjects -- well, maybe I'm assuming something  
19 there. Did Mr. Traineau, in addition to making a presentation,  
20 did he speak while the PowerPoint was being delivered? Was it  
21 a sequential slide show with his narrative?

22 A. I think that's quite normal that the person who made the  
23 presentation is not standing there next to the presentation  
24 without saying anything. For sure he was saying something.

25 Q. I assumed as much, but I wanted to kind of set that



DlfQmed2

Dierks - cross

1 predicate. Now, in his discussion, his narrative as he was  
2 going through the slide show, did he talk about the subject of  
3 managing the health authorities' price pressure and the  
4 Tambocor cycle life management?

5 A. Yes.

6 Q. Did you take notes at that meeting?

7 A. No.

8 Q. Did you ever see some Meda prepared summary of what took  
9 place at the meeting and what was said?

10 A. No. As I told you, first of all, the purpose of this  
11 meeting was more to get a feeling about the person of  
12 Mr. Traineau, so not so much with regard to what the subjects  
13 said, but, no, we have not taken notes with regard to these  
14 things. We look more at the person of Mr. Traineau.

15 Q. Was this meeting in Sweden in 2006 dedicated exclusively to  
16 interviewing, if you will, Mr. Traineau?

17 A. No, there were several other persons.

18 Q. Several other persons with Meda France?

19 A. No. Next day came someone if you want to say that was also  
20 placed in France, who was Ton van't Hullenaar, who was heading  
21 the marketing for Tambocor and was placed in France.

22 Q. During this presentation, Mr. Traineau described the  
23 history of the negotiations between CEPS and Tambocor CR --

24 A. No.

25 Q. -- didn't he?

DlfQmed2

Dierks - cross

1 A. No.

2 Q. He addressed CEPS price pressure under the then existing  
3 conditions, under the then existing negotiations between CEPS  
4 and 3M, didn't he?

5 A. What he had said, he said in France, like in all other  
6 countries, also that there's price special coming from the  
7 authorities as a source from the government. And he was also  
8 speaking about this Tambocor life cycle management; that  
9 Tambocor CR is replacing Tambocor IR. And if you flip over to  
10 the page which ends 1303, then you see that he was indicating  
11 that Tambocor CR 2007 would have growth 14 percent while  
12 Tambocor IR would have reduction of 23 percent.

13 Q. So the answer to my question is no?

14 A. The question is that he was making only general statements  
15 about the price percent.

16 Q. Sir, I told you earlier I wasn't going to come back to your  
17 witness statement. I forgot something I wanted to cover.  
18 Forgive me. Let's go back to your witness statement and look  
19 at Tab 5, JX-109?

20 A. Yes.

21 Q. Is this a series of emails that took place on December 13,  
22 2006?

23 A. Yes.

24 Q. And Mr. Senac in the first email in time, which is the  
25 bottom one, is reporting to you that he is drawing your

DlfQmed2

Dierks - cross

1 attention to an issue as the current pricing agreements, the  
2 so-called convention and pricing authorization renewals will be  
3 transferred to Meda in France. Do you see that?

4 A. Yes.

5 Q. And the issue that he is advising you of is that  
6 Mr. Traineau told him, Mr. Senac, the country manager of Meda  
7 France, that there is a current risk of a 10 percent price  
8 decrease of Flecaine CR, i.e., a risk of 4 million euros price  
9 decrease on an annual basis, correct?

10 A. That's written there.

11 Q. And whether or not you believe what was being reported to  
12 you or otherwise, a risk of a \$4 million euro price decrease on  
13 an annual basis due to a price decrease in Flecaine LP was a  
14 major issue, fair to say?

15 A. With regard to this, no.

16 Q. If -- OK. Mr. Senac ends the question "whether or not we  
17 should discuss guarantees from 3M France on the occasion of the  
18 local closing," correct?

19 A. That's written there.

20 Q. Had to your knowledge any price guarantees been negotiated  
21 by Meda in France into any of the country acquisition  
22 agreements that were executed at the time of the closing?

23 A. No idea. That's why I forwarded this question to  
24 Mr. Larnholt and Mr. Stenqvist.

25 Q. And your question in your single-line transmittal email to

DlfQmed2

Dierks - cross

1 Messrs. Larnholt and Stenqvist was, does the contract foresee  
2 here any kind of mechanism?

3 My question is simply this, by mechanism, were you  
4 talking about a price guarantee provision?

5 A. That was related to the last sentence of the email of  
6 Mr. Senac. The question is whether or not we should discuss  
7 guarantees from 3M France on the occasion of the local closing.

8 Q. Sir, while we're on this notebook, in order we can put an  
9 end to the reference to it, if you look at Tab 9?

10 A. In which?

11 Q. Same notebook we're on, PX-360?

12 A. Yes.

13 Q. This is one of the exhibits to your witness statement. And  
14 I want to direct your attention to the email at the bottom of  
15 the first page from Mr. Maupas to you and Mr. van't Hullenaar.  
16 And, by the way, I'm not sure it's clear in the record,  
17 Mr. Maupas became the country manager of Meda France, correct?

18 A. Yes, he was the successor of Mr. Senac.

19 Q. Taking Mr. Senac's place?

20 A. Yes.

21 Q. And also Mr. Traineau's place?

22 A. Mr. Traineau had decided end of January 2007 to leave us.  
23 So, as I explained yesterday, when 3M -- when we acquired this  
24 business, and when we knew Mr. Traineau by this would come over  
25 to us, we split the country manager position into country and

DlfQmed2

Dierks - cross

1 states -- marketing states or country and states, country  
2 manager and marketing states, which Mr. Traineau took over, and  
3 the rest Mr. Senac should take over and then we had discussed  
4 with Mr. Traineau if he's doing his job well that he will  
5 become only country manager. Then Mr. Traineau left, so  
6 Mr. Senac was the only country manager again, and Mr. Maupas  
7 took this over.

8 Q. Plaintiff's Exhibit 360 from Mr. Maupas to you dated  
9 April 2, 2008, there is a section in this email entitled  
10 Flecaine 2008, correct?

11 A. Yes.

12 Q. It begins "a price decrease is" --

13 THE COURT: Do you want to move this in?

14 MR. RENARD: Your Honor, I believe it already is.

15 THE COURT: Except I think you objected.

16 MR. RENARD: Well, your Honor --

17 THE COURT: Do I have that right? Is 361 an issue.

18 MR. RENARD: But I thought, your Honor, the ruling was  
19 that it might be subject to knowing what was said and  
20 understood what was understood between --

21 THE COURT: That's fine.

22 MR. RENARD: My question is simple.

23 THE WITNESS: Is it possible that I could have some  
24 water, please? Thank you.

25 Q. The bottom of that first page of PX-360, there's a

DlfQmed2

Dierks - cross

1 statement made, the second line from the bottom: "As far as  
2 the percentage of decrease is concerned, his ultimate goal is  
3 to set the daily cost of CR at the cost of the IR," correct?

4 A. Yes, that's what it says.

5 Q. And is that your understanding at the time?

6 A. That was the sentence that Mr. Maupas sent to us.

7 Q. Now, sir, we can set that notebook aside?

8 A. OK.

9 Q. Then if we go to Tab 13 of the notebook that I presented to  
10 you this morning, which is DX-307, and I will ask you, sir, if  
11 that is a string of emails that ends with an email dated  
12 December 19, 2006 to Mr. Senac with a copy to you and to others  
13 entitled, among other things, Risk of Price Decrease Tambocor  
14 CR France?

15 THE COURT: Which page are you looking at?

16 MR. RENARD: The email string, your Honor, ending with  
17 the email that I identified, which, in other words, is the  
18 first one that appears on the document at the top of page 1.

19 Q. Is that a seem string, Mr. Dierks, that you were involved  
20 in?

21 A. That came out to my knowledge, yes.

22 MR. RENARD: Your Honor, we would move the admission  
23 of DX-307.

24 MS. BROWN: No objection, your Honor.

25 THE COURT: DX-307 is admitted.

DlfQmed2

Dierks - cross

(Defendant's Exhibit 307 received in evidence)

Q. Mr. Dierks, then if you could go to Tab 14? Is this an email from Mr. van't Hullenaar dated January 12, 2007 to you and others?

A. As you see, yes.

MR. RENARD: Your Honor, we would move the admission of DX-350.

MS. BROWN: No objection.

THE COURT: DX-350 is admitted.

(Defendant's Exhibit 350 received in evidence)

Q. Mr. Dierks, I want to examine the time point December 2006 prior to the acquisition.

THE COURT: Mr. Renard, approximately how much longer?

MR. RENARD: Your Honor, probably no more than ten minutes.

THE COURT: Let's go ahead and take a quick break, and then we will finish up and go straight into any redirect if there is. So it's 11:18. Let's just make it a five minute break.

(Recess)

(In open court)

THE COURT: Mr. Renard.

BY MR. RENARD:

Q. The same notebook, Mr. Dierks, that we left with, I believe we were last on Tab 13?

DlfQmed2

Dierks - cross

1 A. 13 or 14?

2 Q. I was going to ask you some questions before we even focus  
3 on the document, so I'll get you there. Upon the closing in  
4 early January of 2007, a number of former 3M Santé employees  
5 became employees of Meda France, correct?

6 A. No, they become employees after the closing.

7 Q. I'm sorry?

8 A. They become -- only become employees after the closing, not  
9 before the closing.

10 Q. Included among those persons who became employees of Meda  
11 France were Mr. Traineau, correct?

12 A. Correct.

13 Q. Who became co-country manager, as we described yesterday?

14 A. Correct.

15 Q. And Ms. Helene Kolsky, K-O-L-S-K-Y, correct?

16 A. Yep.

17 Q. What was Ms. Kolsky's title with Meda France?

18 A. She was within Santé, 3M Santé, she was head of the drug  
19 regulatory department of France, if I may recall this  
20 correctly, and she would have had then a position within the  
21 drug regulatory department. But, you know, to become an  
22 employee is not like you have described it. From the law in  
23 Europe is like this, if a business is transferred, then the  
24 persons who for the majority of the work worked with these  
25 products from a legal point of view are also going over to the



DlfQmed2

Dierks - cross

1 new company, but they have to the right also to say, no, we do  
2 not want to go over. So they are not automatically employees  
3 of the new company.

4 Q. So, no one was forced to be an employee of Meda France  
5 against their will?

6 A. No.

7 Q. Ms. Kolsky then, as I understand it, had similar  
8 responsibilities and a title similar to what she had prior to  
9 the closing with 3M Santé, correct?

10 A. No.

11 Q. Head of regulatory affairs?

12 A. No, because I think this was a question where, you know,  
13 when you bring two businesses together, you have the head of  
14 drug regulatory also in Meda before. So normally when the  
15 business come together, you have not automatically two heads.  
16 Automatically she was not the head. So then we would have  
17 looked into what kind of function we would have been possible  
18 to offer her in the drug regulatory department.

19 Q. Did her initial responsibilities when she became an  
20 employee of Meda France include matters relating to CEPS  
21 regulatory pricing matters?

22 A. Within Meda?

23 Q. Yes, sir.

24 A. No, I don't think so.

25 Q. Now, after the acquisition, was a budget prepared for Meda

DlfQmed2

Dierks - cross

1 France for calendar year 2007?

2 A. Could you precise the date after acquisition?

3 Q. I believe acquisition the closing took place on January 2,  
4 2007.

5 A. The budget was made before.

6 Q. By who?

7 A. By Meda France.

8 Q. So, prior to Meda France -- well, you make a point. Let me  
9 ask you, after the acquisition when Meda France, I take it,  
10 expanded in size by acquiring the assets that had been the  
11 assets of 3M Santé, was a new 2007 budget prepared on the  
12 assumption for or on the basis that Meda France now had these  
13 additional pharmaceuticals that it acquired from 3M?

14 A. As we knew before the acquisition that we will have an  
15 acquisition, this was foreseen and put in the budget into it  
16 and we took the figures that 3M Santé had planned for Tambocor.

17 Q. And did those figures assume any price decrease in Flecaine  
18 LP for the calendar year 2007?

19 A. That was exactly all this email corresponding because in  
20 December, Mr. Traineau, who was foreseen to become the country  
21 manager, stays in marketing for France and under which  
22 responsibility it would have been then to realize the figures,  
23 came up in the mail that we have seen saying we should take a  
24 10 percent price decrease as a risk into this budget. There is  
25 nothing untoward, you know, you get a new job, you know that

DlfQmed2

Dierks - cross

1 you are responsible and then you have to do this. And the mail  
2 you have here, pointed out exactly about this question: Should  
3 we take this risk in or should we not take this risk in of the  
4 10 percent.

5 Q. Is the answer to my question, there was a 10 percent  
6 assumption of a price decrease in Flecaine LP built into the  
7 2007 budget for Meda France?

8 A. There was we took this risk in, yes.

9 Q. Turn, sir, to tab 14 which is DX-350, and I will ask you if  
10 this appears to be an email chain that ends with the one at the  
11 top of the first page from Mr. van't Hullenaar to you dated  
12 January 12, 2007?

13 A. Yes.

14 Q. Does this concern the Meda France 2007 budget?

15 A. Yes.

16 (Continued on next page)

17  
18  
19  
20  
21  
22  
23  
24  
25

D1FJMED3

Dierks - cross

1 MR. RENARD: We move DX 350 into evidence.

2 MS. BROWN: No objection.

3 THE COURT: DX is admitted.

4 (Defendant Exhibit 350 received in evidence)

5 BY MR. RENARD:

6 Q. Turn to 15, sir, which is DX 588, which appears to be an  
7 e-mail, an attachment from Ms. Kolsky to Mr. Senac, with a copy  
8 dated to --

9 MR. ARMENIO: We have already objected to this. Your  
10 Honor, I believe, has already ruled on it. I don't know why it  
11 is even being shown to the witness right at this moment.

12 MR. RENARD: I am identifying it for the purposes of  
13 offering it into the record, at which point in time I assume  
14 there would be an objection and we would argue it. With  
15 that --

16 MR. ARMENIO: It has been objected to, and the basis  
17 for the objection, this witness has no connection to the  
18 document whatsoever, it is completely improper to go fishing  
19 with Dr. Dierks on this document.

20 MR. RENARD: I appreciate that --

21 THE COURT: I am sorry.

22 THE COURT: Let me -- we're looking at -- do I have  
23 the translation of --

24 MR. RENARD: Yes, your Honor, at the very last page  
25 after the certification is the translation, there is a

D1FJMED3

Dierks - cross

1 translation of the cover e-mail and a translation of that  
2 French language slide of Article II and Article III.

3 THE COURT: Saying it is the last? Okay.

4 (Pause)

5 THE COURT: I want to make sure I am looking at the  
6 right thing. Tab 15 is --

7 MR. RENARD: DX 588, your Honor, which is a January  
8 22, '07 e-mail, Kolsky to Senac with attached presentation, and  
9 then at the very back is the certification and the translation  
10 of the two pages of DX 588 that are in the French language.

11 MR. ARMENIO: Just to make the record clear, we have  
12 already checked into DX 588. There is no foundation with this  
13 witness. The author recipient and copy person, none of them  
14 have talked about it. Ms. Kolsky is not coming to trial. Mr.  
15 Senac in a full day deposition wasn't asked about it.

16 Mr. Raineau will submit a declaration he didn't talk  
17 about it. We further object to the English language  
18 translation. It purports to translate Article 2.2 in a way  
19 contrary to the joint stipulated Fact 15 in the pretrial order  
20 which is the agreed translation of Article 2.2. That is an  
21 additional objection to the translation.

22 THE COURT: All right. Let me hear an effort to lay a  
23 foundation.

24 MR. RENARD: Your Honor, if I may.

25 BY MR. RENARD:

D1FJMED3

Dierks - cross

1 Q. First of all, Mr. Dierks, did Mr. Senac ever report to you  
2 or advise you of his receipt of this document?

3 A. No.

4 Q. Have you ever seen this document?

5 A. No. I have seen it for the first time.

6 THE COURT: Sustained.

7 MR. ARMENIO: Thank your Honor.

8 MR. RENARD: Your Honor, may I respectfully be heard  
9 on that?

10 THE COURT: Sure.

11 MR. RENARD: Your Honor, this document was produced by  
12 Meda. It is a Meda-prepared document.

13 THE COURT: The witness just said he has never seen it  
14 before. So how can he answer questions about it?

15 MR. RENARD: Answering questions and respectfully  
16 getting it into evidence are two different things. These are  
17 admissions.

18 THE COURT: That is true. You can ask him questions  
19 about documents in evidence.

20 MR. RENARD: Your Honor, we would move it into  
21 evidence. At this point I am not going to ask him any  
22 documents. Move it into evidence. Counsel, please, you argue  
23 it now three times without giving me an opportunity.

24 THE COURT: You have all the opportunity you want, Mr.  
25 Armenio. I will always give everyone an opportunity.

D1FJMED3

Dierks - cross

1 MR. RENARD: I am not suggesting the court isn't.

2 These are admissions by Meda in a document prepared by  
3 Meda and --

4 THE COURT: If there were hearsay objection, you could  
5 overcome a hearsay objection.

6 MR. RENARD: Yes, your Honor.

7 THE COURT: You still have to move something in, a  
8 foundation has to be laid by a witness who has person knowledge  
9 of the document.

10 MR. RENARD: I will, your Honor, I'll move on.

11 THE COURT: If you get it in some other way and want  
12 to come back to it, that is fine. If you anticipate that,  
13 given the way we are ordering witness, that is fine as well.

14 MR. RENARD: Very well. I'll move on.

15 BY MR. RENARD:

16 Q. Mr. Dierks, when is the first time that you're aware of  
17 anyone from Meda was informed that CEPS had asked or requested  
18 or demanded that 3M introduce a generic alternative to Flecaine  
19 P0 with pricing for Flecaine LP at a generic level?

20 A. Middle of December, 2007 when Mr. Renaudin informed me of  
21 this.

22 Q. Isn't it correct that Mr. Senac was aware earlier than  
23 that?

24 MS. BROWN: Objection, your Honor. It is --

25 BY MR. RENARD:

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Dierks - cross

1 Q. Turn, sir, to Tab 16, which, sir, is an October 3, 2007  
2 e-mail to a number of individuals, copied to a number of  
3 individuals including Mr. Senac and I will ask if you have ever  
4 seen this before?

5 A. No.

6 Q. Did Mr. Senac or anyone else from Meda ever tell you that  
7 in, prior to December of 2007, that 3M had discussed with CEPS  
8 the possibility of introducing a generic competitor to Flecaine  
9 LP?

10 A. No.

11 MR. RENARD: Your Honor, we move the admission of DX  
12 384.

13 MR. ARMENIO: Same objection, no foundation whatsoever  
14 with this witness.

15 THE COURT: Sustained.

16 BY MR. RENARD:

17 Q. Finally, sir, if you turn to Tab 18 to begin with, DX 393

18 MR. RENARD: I'll note for the record, if I may, going  
19 back to Tab 16, DX 384 is also a joint exhibit, JX 116; and,  
20 therefore, we move its admission?

21 THE COURT: So it is already in?

22 MR. RENARD: Yes, your Honor.

23 THE COURT: You can ask the witness about something in  
24 evidence.

25 BY MR. RENARD:



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Dierks - cross

1 Q. It is correct, is it not, Mr. Dierks that prior to December  
2 of 2007 Meda was well aware that there had been discussions if  
3 not at one point in time agreements relating to the  
4 introduction of a generic equivalent of Flecaine LP?

5 A. I was not aware and was not aware that somebody else was  
6 aware.

7 Q. Have you read the complaint and the amended complaint that  
8 Meda has filed in this case?

9 A. No.

10 Q. Were you aware that overtime Meda's allegation in this  
11 Court as to when it first learned of the 2003 CEPS convention  
12 has changed --

13 MR. ARMENIO: Objection.

14 Q. -- from February to the fall to the December of 2007?

15 MR. ARMENIO: Objection, both assumes facts not in  
16 evidence and argumentative.

17 THE COURT: Sustained.

18 BY MR. RENARD:

19 Q. Turn, sir, to Tab 18.

20 A. Yes.

21 Q. I'll ask you, sir, if that document which is DX 393 is  
22 signed by you on behalf of Meda Pharma SAS?

23 A. Yes.

24 Q. And then, sir, Tab 19, DX 421, the same question, is that a  
25 document signed by you?

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Dierks - cross

1 A. Yes.

2 MR. RENARD: Your Honor, we move the admission of DX  
3 393 and DX 421.

4 THE COURT: It may be in already.

5 MS. BROWN: No objection.

6 THE COURT: These are not joint exhibits?

7 MR. RENARD: No, your Honor.

8 MS. BROWN: No, your Honor.

9 THE COURT: DX 393 and DX 421 are admitted.

10 (Defendant Exhibits 393 and 421 received in evidence)

11 MR. RENARD: Your Honor, if the court will permit me  
12 one second.

13 (Pause)

14 MR. RENARD: Upon consultation, your Honor, I have no  
15 further questions. Mr. Dierks, thank you for your patience.

16 THE COURT: Do you have redirect?

17 MS. BROWN: Yes.

18 THE COURT: I had one question. I always give  
19 everybody a chance do follow-ups, if you want to, after I ask a  
20 question. Mr. Dierks, in your declaration, Mr. Renard asked  
21 you about this, Paragraph 43 --

22 THE WITNESS: Yes.

23 THE COURT: -- you said I recall specifically looking  
24 at documents relating to document and sales information  
25 including product information and in the data room you didn't

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Dierks - cross

1 come across any information related to a signed agreement in  
2 France mandating price reduction.

3 Did you come across other CEPS conventions including  
4 annual, the annual renewals?

5 THE WITNESS: No.

6 THE COURT: Did you come across the CEPS or with other  
7 agencies with respect to other countries those kinds of --  
8 well, stick with France -- pricing and reimbursement approvals  
9 and the like?

10 THE WITNESS: No, those were not, but as I told you  
11 before, for me when I went into the data room, my job was not  
12 to have, first of all, overall view what is in the data room.

13 I was, as I said yesterday, not very long in the data  
14 room itself because for this we had consultants looking into it  
15 that would have come up with something special, something that  
16 we would have not known before, something that would have been  
17 contradictory, and nothing like this has -- I have not been  
18 informed about anything like this.

19 THE COURT: When you say you were looking at documents  
20 related to this and you didn't see some sets of things, so  
21 would you have thought in what you were looking at you would  
22 come across CEPS conventions?

23 I am just thinking there might be a volume of them?

24 THE WITNESS: Let me say it like this: If, for  
25 example, there would have been a point CEPS convention, perhaps

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Dierks - cross

1 I would have seen it, but there was not special CEPS  
2 convention.

3 THE COURT: Was your understanding that there ought to  
4 have been?

5 THE WITNESS: No. As I said, it depends. Now, the  
6 CEPS convention --

7 THE COURT: I am just talking about not something I  
8 understand the distinction you're drawing, but I guess as I'm  
9 thinking about it, shouldn't there be sort of a bulk of  
10 documents, even the annual renewals that show the published  
11 price?

12 THE WITNESS: Yes, I would have thought CEPS would  
13 have been in the regular --

14 THE COURT: Shouldn't somebody have -- and I am  
15 assuming they weren't.

16 THE WITNESS: Yeah.

17 THE COURT: Is that right, they weren't?

18 THE WITNESS: No, they weren't, according to my  
19 knowledge.

20 THE COURT: Should that have surprised somebody?

21 THE WITNESS: No. As I said, as in known CEPS  
22 convention, normally it is only a list of prices that are  
23 reimbursed which are publicly known. Let me say no, I would  
24 not have been surprised.

25 Honestly, I would have thought they put something in

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Dierks - cross

1 like this. If I would have been the one preparing the data  
2 room, for sure I would have put them in because for me this is  
3 part of, as I said, the paper that you should provide.

4 Let me say on the other side, the information is  
5 normally in the CEPS convention that is the price that is  
6 publicly known.

7 THE COURT: Right. The price is publicly known?

8 THE WITNESS: Yes.

9 THE COURT: Otherwise, it is not?

10 THE WITNESS: Yes.

11 THE COURT: Is it right, my assumption, there would  
12 be, if that kind of material were included, it would be a  
13 fairly large volume?

14 THE WITNESS: Yes, I think so. You have seen the CEPS  
15 convention, yes, CEPS conventions are a table of some pages,  
16 depending on how many reimbursed products you have, and 90  
17 percent of this is only the list prices for the products.

18 THE COURT: The drug and price?

19 THE WITNESS: Yes. This is normally the only thing  
20 that is in, according to my knowledge of the CEPS convention I  
21 know, I would say 97 percent, 98 percent only have this. You  
22 have several annexes, so 1 to 6 or something like this and the  
23 first ones are more general remarks, then you have, as I said,  
24 pricing. Normally at the end you have something with regard to  
25 new products, but the normal CEPS conventions only list

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Dierks - cross

1 products with reimbursed price that is well known.

2 THE COURT: Is it your understanding -- if you don't  
3 know, just say so -- with respect to any French products, any  
4 CEPS documents, any communications, conventions,  
5 authorizations, whatever, anything like that contained are in  
6 the data room?

7 THE WITNESS: Yeah. Let me say the registration  
8 files, we have spoke about this different steps of getting the  
9 registration. For example, all the so-called registration  
10 files in which there are CEPS --

11 THE COURT: Right, but different agency, right?

12 THE WITNESS: Yes.

13 THE COURT: I am just asking about CEPS.

14 THE WITNESS: According to my knowledge, CEPS, no.

15 THE COURT: Is that surprising?

16 THE WITNESS: As I said, yes and no. It would not be  
17 surprised, only the list of well known prices, then you could  
18 say put it in, but there is no value coming, no information  
19 coming out of this paper. It is surprisingly for sure now  
20 because there was one CEPS convention that --

21 THE COURT: I am sort of just --

22 THE WITNESS: I am not surprised. Honestly, I would  
23 have put them in the data room, but for me it is not -- saying  
24 it is not in, as long as it only gives list of reimbursed  
25 prices, there are none.

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Dierks - cross

1 THE COURT: Would it be a flag? If the assumption is  
2 it would be in, as you say, you would do it?

3 THE WITNESS: I would do it, yes. I would put them  
4 in. That is paperwork that should be in.

5 THE COURT: If you were looking at everything,  
6 obviously you have a bigger job than that, but if you were  
7 looking at everything, would you have noticed the absence of  
8 that?

9 THE WITNESS: I don't think so because, you know, it  
10 is also -- the data room is -- the thing, it is a chain of  
11 things. For sure we ask are there any documents, contracts  
12 that are legally binding that are not in the data room, yeah.

13 As I said, you know, for me it is two opposites. For  
14 the year, we do roughly 10 deals. That is the first time that  
15 we have this problem. That is the first time that we have to  
16 seek litigation with regard to this.

17 So when you make business sometimes, and okay, I am  
18 now working for them years from here, say made 70 deals, I  
19 assume normally that if I advise something, then that the  
20 person giving me a fair picture and is coming up and telling  
21 me, sorry, that you should know. I am not assuming people  
22 cannot, cannot forget something.

23 I think that is knowledge to speak about let me say a  
24 small product to make it like this which has economically no,  
25 no importance, but for sure we speak about the biggest product,

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Dierks - cross

1 the biggest country, and for sure in the first step I am not  
2 saying I assume the person is sitting on the other table wants  
3 to hide something from me.

4 I am assuming like it was always he wants to sell  
5 something, he wants to have good business deal, and for this  
6 good business deal there is a problem that I give you a fair  
7 picture of the business that you buy, and that's it.

8 If something is not in, I am not automatically saying  
9 they must be hiding something. I am assuming, okay, people  
10 with knowledge and information only what is the reimbursed  
11 price that is known, does not -- is not a big thing to put it  
12 in or not.

13 THE COURT: Thank you. Anything?

14 MR. RENARD: I have a brief follow-up.

15 THE COURT: Go ahead. Scope of what I asked?

16 MR. RENARD: Yes, your Honor.

17 CROSS-EXAMINATION continued

18 BY MR. RENARD:

19 Q. Mr. Dierks, you understood, though, that negotiations were  
20 ongoing between 3M and CEPS with respect to the next convention  
21 for Flecaine LP, correct?

22 A. I think you asked this question already, and I gave you the  
23 answer no, I was not aware that they were ongoing. I was aware  
24 there will be discussions with CEPS because if you bring a  
25 product to the market in 2003, and the convention is for five



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Dierks - cross

1 years, that means it will end in 2008. So I was aware that  
2 somewhere in 2007 there must be new, but I was not aware there  
3 were ongoing negotiations.

4 Q. Did you ask 3M for any documents relating to any proposals  
5 or suggested conventions; in other words, correspondence  
6 between 3M and CEPS relating to this upcoming new convention?

7 A. As an company, you do not propose conventions.

8 Q. Right. CEPS proposes the convention?

9 A. It is like this: CEPS, together with the company, speaks  
10 about it, and the outcome of this negotiation, if you like to  
11 say so, is laid down then in a convention.

12 Q. Did you ask for any correspondence apart from existence of  
13 conventions, any correspondence between CEPS and 3M relating to  
14 a proposed convention?

15 A. No, because there was not a proposed convention.

16 MR. RENARD: Thank your Honor. That is all I have.

17 THE COURT: Redirect, Ms. Brown. Obviously, you also  
18 can ask any redirect within the scope of my questions.

19 MS. BROWN: Thank your Honor.

20 REDIRECT EXAMINATION

21 BY MS. BROWN:

22 Q. Dr. Dierks, if you would look in the blue binder in front  
23 of you, and if you could turn to Tab 12 --

24 THE COURT: What is the blue binder?

25 MS. BROWN: It is the binder that does not contain the

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Dierks - redirect

1 declaration.

2 THE WITNESS: I'm in the wrong one.

3 (Pause)

4 THE COURT: Got it!

5 THE WITNESS: Yes.

6 BY MS. BROWN:

7 Q. If you could turn to the page ending in 1298.

8 A. Yes.

9 Q. I believe you were asked some questions on your  
10 cross-examination about the bullet points contained on this  
11 page, including the second bullet point where it says manage  
12 the health authorities --

13 THE COURT: Would you lower the microphone? I share  
14 your tall personality.

15 MS. BROWN: I am not as tall as Mr. Renard.

16 BY MS. BROWN:

17 Q. The second bullet point, you're there?

18 A. Yes.

19 Q. When Mr. Traineau gave you this presentation in Sweden, and  
20 when you're discussing this information about the health  
21 authority's price pressure, did he ever mention to you Article  
22 2.2 of the CEPS convention?

23 A. No, never.

24 Q. Did he ever mention that there was a convention with CEPS  
25 that might have been canceled?

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Dierks - redirect

1 A. No.

2 Q. Did he ever mention there was a risk of generic pricing  
3 with --

4 A. No.

5 Q. Did he ever mention there was a risk, 50 percent risk of 50  
6 percent price cut for Tambocor?

7 A. No.

8 Q. In the discussions surrounding the slide, what did you --  
9 your best recollection of what Mr. Traineau was telling you in  
10 connection?

11 A. That there was a general price pressure on reimbursed drugs  
12 in France which left in all countries.

13 Q. In the same binder, can you please turn to Tab 13, the very  
14 next tab.

15 A. Yes.

16 Q. This is an e-mail. You were asked some questions about  
17 this in your cross-exam. Do you remember this?

18 A. Yes.

19 Q. If you look, I am going to go to the last e-mail in the  
20 chain. Do you see where it says dear all, this is to confirm  
21 this is a risk of a price decrease estimated at 10 percent or 4  
22 million Euro per capita. I believe you said earlier when you  
23 say this, this was not a major issue. Why did you believe this  
24 is not a major issue?

25 A. As I said, first of all, if you read this sentence, this is

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Dierks - redirect

1 a totally different thing than this article what we have spoken  
2 about because he is saying okay, the list of 10 percent price  
3 decrease on the occasion of the price, you get every five years  
4 for every drug in France. That is exactly what I mentioned  
5 before, drug came into market in 2003, so five years later is  
6 2008, that means you start making a decision in 2007.

7 The second thing, Mr. Traineau, as I just told, was  
8 the person we have spoke with that said listen, you are our  
9 person, if you do your job well, you will be successor of  
10 Mr. Renaudin, becoming the country manager of one of the  
11 countries of Meda, so very important country.

12 As we took the forecast we have received from Sweden,  
13 so his figures, so to say, and for sure that is a bad common  
14 thing that a lot of country managers tell us okay, there might  
15 be price decrease, there might be resistance, not possibility  
16 to achieve the -- that gives them a little reserves, gives them  
17 a little bit of air, let me say, and confidence to reach and  
18 especially in the situation of Mr. Traineau, there was a  
19 special one because he knows we were on a dry period to become  
20 the country manager for sure, he wanted to be sure that is what  
21 I achieve and that is --

22 Q. Did you have any understanding at all this risk of a 10  
23 percent price decrease related to a signed convention?

24 A. No, not at all because you see it is not set with regard to  
25 convention. It was the upcoming five years renewal, meaning

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Dierks - redirect

1 the normal automatic procedure.

2 Q. Did you have any understanding at all that this risk of a  
3 10 percent price decrease related to some other commitment or  
4 obligation made by 3M to CEPS?

5 A. No. That is all the point. For me it is very strange. We  
6 know that a signed convention, a signed convention it is at  
7 minus 50 percent. Here is this person that says there might be  
8 a risk of 10 percent. For me I can't understand this. I  
9 cannot understand how a person, knowing we have signed  
10 something like 50 percent, is telling me might reserve of 10  
11 percent.

12 Q. If you can turn to the other binder you have in front of  
13 you, and if you can turn to Exhibit 8 --

14 A. Yes.

15 Q. -- this is PX 541. This is an e-mail from Christoph Maupas  
16 to you and Ton Vant Hullenaar on January 29, 2008. Dr. Dierks,  
17 can you please explain to us what this e-mail and attachments  
18 are?

19 MR. RENARD: Objection. I don't believe there was any  
20 inquiry about this particular exhibit.

21 MS. BROWN: I am re-directing on this exhibit in light  
22 of the objection that was raised, directly in response to that  
23 objection.

24 MR. ARMENIO: Exhibits discussed in his declaration  
25 and there was an objection that there wasn't adequate

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Dierks - redirect

1 foundation, and we are trying to establish the adequate  
2 foundation, which your Honor I believe allowed us the  
3 opportunity to do.

4 MR. RENARD: It wasn't a foundation objection at all.  
5 The objection is hearsay. I think I explained at some length  
6 why I believe in terms of going through the history and  
7 statement of facts, an internal Meda document, to proffer it  
8 through the matter asserted.

9 MS. BROWN: My understanding was that the exhibit,  
10 that the objection to foundation was the reason that the  
11 exhibit was being not admitted into evidence, not because of  
12 hearsay. That was my understanding.

13 THE COURT: I think, no, I think this was one of the  
14 hearsay objections from yesterday and it was one I asked about  
15 the letter was different from the other ones, and what I said  
16 was there had been no foundation laid to offer, for example, to  
17 establish that it is a business record or another exception.

18 MR. ARMENIO: This one wasn't from yesterday, your  
19 Honor.

20 THE COURT: It is not?

21 MR. ARMENIO: This one was just from today, with  
22 Mr. Dierks' declaration and was pointed out that perhaps the  
23 sentence that introduces this exhibit in his declaration was  
24 not sufficient standing alone to establish a business record  
25 objection.

D1FJMED3

Dierks - redirect

1 THE COURT: This was from yesterday, yes, it was.

2 MR. ARMENIO: Your Honor, I apologize. My team is  
3 reminding me this was discussed in part yesterday.

4 THE COURT: And I raised it this morning in going over  
5 my views of the objections, indicating that I didn't understand  
6 what it was, but I did say -- it was a hearsay objection made  
7 to it yesterday, so I'll let you make an effort at laying a  
8 foundation. I mean I gather it is not with respect to the  
9 witness's knowledge, but what is in it and see if you can  
10 overcome the hearsay objection.

11 BY MS. BROWN:

12 Q. Dr. Dierks, can you just explain to us what the attachment  
13 to this is?

14 A. After I got the message in the middle of December and then  
15 in the end of December 2007 saying that this is the situation  
16 that CEPS wants us to reduce the price of Flecaine 50 percent  
17 according to the problem, he said the hierarchy, the beginning  
18 of January will have a meeting together in Paris and this is  
19 outcome out of this meeting that we had.

20 Q. Is this a Power Point presentation that you created?

21 A. Not me. That was created by Christoph Maupas.

22 Q. Is this a Power Point presentation he showed you during --

23 A. Yes.

24 MS. BROWN: Your Honor, we would proffer this exhibit  
25 into evidence as PX 541.

D1FJMED3

Dierks - redirect

1 MR. RENARD: Your Honor, clearly this is not a  
2 business record.

3 THE COURT: There has been no showing that would get  
4 me there. The objection is sustained. You want this in to  
5 establish the truth of the things contained in here?

6 MS. BROWN: No, your Honor. I think we are looking at  
7 it more to establish the state of mind of the Meda executives  
8 when they were faced with this problem in December leading into  
9 January 2008, how they addressed this problem, what they  
10 thought their options were and to really show how it  
11 impacted -- it showed their belief of what was really going on  
12 in this moment of time. It is contemporaneous, it is within a  
13 month of learning about the CEPS convention that existed.

14 THE COURT: I wouldn't let it in in light of what we  
15 have seen so far for the truth, but as with the other ones,  
16 I'll see if there is some purpose for which it is being put to  
17 me that would be a permissible purpose other than for the  
18 truth.

19 MS. BROWN: Thank your Honor.

20 THE COURT: But the hearsay objection, to the extent  
21 you're offering it for the truth, is sustained.

22 MS. BROWN: Understood. Thank you, Dr. Dierks. I  
23 have no further questions.

24 MR. RENARD: Nothing further, your Honor.

25 THE COURT: Thank you, Dr. Dierks.



D1FJMED3

Dierks - redirect

1 (Witness excused)

2 THE COURT: You may call your next witness.

3 MR. ARMENIO: Thank your Honor. Plaintiffs Meda AB  
4 calls Anders Larnholt as the next witness.

5 MR. CARLINSKY: Just for clarification, Mr. Dierks now  
6 he has completed his testimony. Can he remain in the  
7 courtroom?

8 THE COURT: Everyone okay with that?

9 MR. RENARD: As long as there is no possibility he  
10 would be recalled. If there is any possibility, we ask the  
11 rule continue to be imposed.

12 MR. CARLINSKY: We'll have him leave. That is a fair  
13 point. If I can be excused to walk Mr. Dierks out?

14 ANDERS LARNHOLT,

15 called as a witness by the Plaintiff,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 MR. ARMENIO: I am handing to the witness the original  
19 of the Larnholt declaration previously submitted to the court.

20 THE COURT: Mr. Larnholt, do you have your declaration  
21 dated December 14th, 2012 in front of you?

22 THE WITNESS: Yes, I do, your Honor.

23 THE COURT: Is there anything in your declaration that  
24 you think is in error or want to bring to my attention as a  
25 mistake?

D1FJMED3

Larnholt - direct

1 THE WITNESS: No, your Honor.

2 THE COURT: Do you swear or affirm that every  
3 statement contained in this declaration, under the penalty of  
4 perjury, is the truth, the whole truth and nothing but the  
5 truth?

6 THE WITNESS: Yes, I do, your Honor.

7 THE COURT: Thank you. So why don't you, Mr. Armenio,  
8 move the admission of the declaration and any exhibits  
9 reference to the exhibits.

10 MR. ARMENIO: Yes, your Honor, plaintiff Meda moves  
11 the admission of Mr. Larnhold's declaration and moves the  
12 admission of six exhibits that have not already been admitted  
13 by the court. Those are PX 235, PX 278, PX 284, PX 239 and PX  
14 328. I would just note for the record that in Mr. Larnhold's  
15 declaration there is reference to PX 427. That has already  
16 been admitted as JX 84.

17 THE COURT: Mr. Collins?

18 MR. COLLINS: No objection.

19 THE COURT: Thank you. So, Larnhold's declaration as  
20 well as additional Exhibits P X 235, 278, 284, 239 and 328 are  
21 admitted.

22 MR. COLLINS: Your Honor, I apologize. I may have  
23 misheard. I thought we were talking about the exhibits. I do  
24 have a few objections to the paragraphs of the declaration, but  
25 not the exhibits.

D1FJMED3

Larnholt - direct

1 THE COURT: The exhibits are in.

2 (Plaintiff Exhibits 235, 278, 284, 429 and 328  
3 received in evidence)

4 MR. ARMENIO: If I may, your Honor may have misspoken  
5 or may have misheard. It was PX 439, not 239.

6 THE COURT: You misheard.

7 MR. ARMENIO: I apologize, your Honor.

8 THE COURT: So, PX 235, 278, 284, 429 and 328 are  
9 admitted. Go ahead, Mr. Collins.

10 MR. COLLINS: The first paragraph is Paragraph 65, I  
11 believe. The first paragraph is Paragraph 65, I believe. The  
12 reference to the Grace Way Pharmaceuticals. It is hearsay,  
13 inadmissible hearsay and has no relevance to this lawsuit  
14 whatsoever.

15 MR. ARMENIO: As to relevance, there has been an  
16 argument repeatedly by 3M the diligence was somehow not  
17 sufficient. This goes directly to the sufficiency of Meda's  
18 diligence when they walked away from the U.S. 3M Pharma  
19 business, and it shows what happened to the company Grace Way.  
20 That business then went bankrupt.

21 It also is the court record statement of a Grace Way  
22 executive, so it is in an official record, as it is a court  
23 statement. So it is relevant and it is not hearsay.

24 THE COURT: Overruled.

25 MR. COLLINS: The next one, your Honor, is Paragraph

D1FJMED3

Larnholt - direct

1 88. We believe it is an improper legal conclusion, trying to  
2 interpret the terms of a document. It is also speculating  
3 about the intent of 3M. At best maybe he can speak to their  
4 intent, not 3M's intent. It is a legal conclusion because it  
5 is interpreting a document that is the province of the court.

6 THE COURT: I'll take that for what it is properly  
7 admitted for. Go ahead.

8 MR. COLLINS: Your Honor, Paragraph 94, your Honor, we  
9 believe is also an improper conclusion, legal conclusion,  
10 improperly opinion testimony when he talks about I believe that  
11 the only way that the agreement, he says could have been  
12 properly disclosed to potential buyers and it goes on to  
13 explain that. So we believe that is an improper, one, legal  
14 conclusion; and, two, improper lay testimony.

15 MR. ARMENIO: We believe it is both relevant and  
16 appropriate testimony. 3M has argued about what is normal to  
17 have been done in a transaction like this, what should Meda  
18 normally have done as a reasonable participant and this speaks  
19 exactly to that. Mr. Larnholt has been involved in over 50  
20 transactions, and he is explaining what is normal to see and  
21 usual to see in this transaction. So it directly responds to  
22 3M's argument that Meda in some way behaved unusually in  
23 connection with this transaction and shows that they, in fact,  
24 did not.

25 MR. COLLINS: Our position is he can certainly testify

D1FJMED3

Larnholt - direct

1 what he has done in other deals, what Meda has done in other  
2 deals. As far as talking about a standard, I don't believe --  
3 it is improper testimony.

4 THE COURT: I will take that for what is permissibly  
5 considered.

6 MR. COLLINS: Paragraph 97, your Honor, we object to  
7 the testimony, that I do not see how 3M could in good faith  
8 make these statements when it knew about existence of the CEPS  
9 agreement. We believe again that is an improper, one, legal  
10 conclusion, good faith unless it is being used in not a legal  
11 determination; two, improper lay testimony, opinion testimony.

12 MR. ARMENIO: This goes directly to the  
13 misrepresentations and fraud of 3M because they make statements  
14 in the offering memorandum and business presentation regarding,  
15 for example, projected EBITDA margin, how profitable the  
16 products will be.

17 Mr. Larnhold's testimony goes directly to the fact you  
18 could not project that EBITDA margin steady and growing over  
19 time at the same time as having have 50 percent price cut  
20 agreement. It is impossible to reconcile the two. 3M argued  
21 continuously the offering memorandum and business presentation  
22 somehow should have alerted Meda to these risks. Mr. Larnholt  
23 explains here that is impossible.

24 THE COURT: I won't take it for a legal conclusion,  
25 but for what it is permissibly being offered.

D1FJMED3

Larnholt - direct

1 MR. COLLINS: Your Honor, Paragraph 112, the  
2 statements that 3M knowingly misrepresented to us the asset we  
3 were acquiring. We believe that is an improper conclusion. It  
4 is also speculation on his part, and he can testify what his  
5 belief was, but as far as speculating that 3M knowingly  
6 misrepresented, that is an improper legal conclusion.

7 MR. ARMENIO: This again --

8 THE COURT: The same response.

9 MR. ARMENIO: -- goes directly to the case.

10 THE COURT: My response is the same.

11 MR. ARMENIO: Thank your Honor.

12 THE COURT: With those noted objections, Mr.  
13 Larnhold's declaration is admitted in with the exception of the  
14 one objection I sustained.

15 CROSS EXAMINATION

16 BY MR. COLLINS:

17 Q. Mr. Renaudin, good afternoon.

18 A. Good afternoon.

19 Q. You have submitted a witness statement in this matter,  
20 correct?

21 A. Correct.

22 Q. You have that in front of you?

23 A. Yes, I do.

24 Q. In your witness statement you contend that Meda had been  
25 damaged, correct?

D1FJMED3

Larnholt - cross

1 A. Correct.

2 Q. And that Meda had been damaged based on certain conduct by  
3 3M. Is that correct?

4 A. Sorry. I can't really hear you.

5 Q. I am sorry. And you contend in your witness statement that  
6 Meda's been damaged based on certain conduct by 3M, correct?

7 A. Can you define, "conduct"?

8 Q. Let me try it a different way.

9 In your witness statement, is it your position that  
10 Meda has been damaged based on something that 3M did or didn't  
11 do?

12 A. I don't think I really understand the question. I think we  
13 were damaged when we bought this business and paid too much.

14 Q. What's the basis for why you believe you paid too much?

15 A. Because there was an agreement that seriously affected the  
16 whole profitability of the company which should have been  
17 disclosed, so we could take that into account in our  
18 evaluation.

19 Q. It is your position that that, what you referred to as  
20 agreement, that document was not disclosed to you, correct?

21 A. That agreement was not disclosed, yes.

22 Q. Any other thing that you, in your witness statement,  
23 contend that 3M did wrong?

24 A. Can you repeat? I can't hear you.

25 THE COURT: We are going to see if we can put more

D1FJMED3

Larnholt - cross

1 volume. Keep your voice up.

2 MR. COLLINS: I will.

3 THE COURT: I think it is not on.

4 MR. CARLINSKY: It is on. I tapped it.

5 THE COURT: I don't hear the taping.

6 MR. CARLINSKY: I'm hearing taps.

7 THE COURT: My clerk is going to try.

8 (Pause)

9 THE COURT: We are going to get somebody up here to  
10 look at it. Do keep your voice up and just let us know if you  
11 can't hear something, Mr. Larnholt.

12 BY MR. COLLINS:

13 Q. Mr. Larnholt, so you say that 3M acted improperly by not  
14 disclosing that document or documents to you, correct?

15 A. This supplemental information that should have been  
16 disclosed. It should have each been disclosed in the offering  
17 memoranda.

18 Q. My question to you is that's the basis, it is what you  
19 contend is the nondisclosure of that document or documents is  
20 what you believe 3M did wrong?

21 A. Can you repeat that question?

22 Q. Other than you say they didn't disclose this document or  
23 documents to you, right, is that correct?

24 A. Yeah, they did not do that.

25 Q. Is there anything else in your witness statement that you



D1FJMED3

Larnholt - cross

1 contend 3M did wrong or should have done or didn't do?

2 A. They should have reflected this in the offering memorandum.

3 Q. Other than this document that you are telling me about, the  
4 documents, anything else?

5 A. I don't really understand the question. Can you rephrase  
6 it in some other way?

7 THE COURT: You have identified the failure to either  
8 disclose the convention itself or discuss it with you as what  
9 3M did wrong, and the question is: Did they do anything else  
10 wrong?

11 THE WITNESS: And I said that they should have  
12 reflected this in the --

13 THE COURT: Right. Other than that, other than either  
14 giving you the document or providing you information in the  
15 offering memorandum or somewhere else, anything other than the  
16 failure to disclose either the document or content of the  
17 document that they did wrong?

18 THE WITNESS: Failure to disclose, it is also failure  
19 to describe how this would impact the whole business.

20 THE COURT: Is the question if there is anything  
21 unrelated to this?

22 MR. COLLINS: The document.

23 THE COURT: Is there anything unrelated, anything  
24 else? They also wore white after Labor Day?

25 Is there anything else in your mind that 3M did that

D1FJMED3

Larnholt - cross

1 in your view was wrong? That seems to be the question?

2 MR. COLLINS: Yes.

3 THE COURT: I think it is a clear question.

4 THE WITNESS: Sorry. I don't really understand it.

5 MR. COLLINS: I'll try one more time and then we'll  
6 move on.

7 BY MR. COLLINS:

8 Q. Sir, okay, you say in connection with this document that  
9 you contend should have been disclosed whether in writing or  
10 handing the document, anything else besides related to that  
11 document that in your witness statement 3M did wrong?

12 A. You're referring always to a document. I think we have to  
13 say the document in the offering memorandum, but you should  
14 describe how things happened, what you believe would happen in  
15 the future for this business. You don't have to say document.  
16 Its in effect an agreement. It should have been reflected in  
17 the figures. I don't really understand it.

18 THE COURT: The question is, other than that, other  
19 than either providing you the document or reflecting the nature  
20 of what was in the document in some other agreement or orally  
21 or in any other way, the question is did in your mind 3M do  
22 anything else improperly?

23 THE WITNESS: Yeah, for sure. They represented to us  
24 that they had given us all the material agreements and  
25 everything in the contract, and they did not.

D1FJMED3

Larnholt - cross

1 BY MR. COLLINS:

2 Q. When you say they didn't give you all material agreements,  
3 is there any agreement other than the document you have just  
4 been talking about, or documents related?

5 A. Documents -- repeat again?

6 Q. When you say they failed to disclose that to you, are we  
7 still just talking about this CEPS convention that you  
8 reference in your witness statement?

9 A. I think they failed to disclose how this would impact the  
10 whole business. So you're referring to specific document. It  
11 should have been laid, the whole foundation should have been  
12 laid out in the offering memorandum and they represented that  
13 that was correct and there was no more material agreements.

14 MR. COLLINS: I'll move on. Maybe I'll come back  
15 later.

16 THE COURT: If you don't understand a question, I  
17 certainly want to make sure that you're given an opportunity to  
18 understand it. At the moment you do understand it, then you  
19 answer the question.

20 THE WITNESS: No, really don't understand it.

21 THE COURT: Okay. All right. I would actually like  
22 to try again because it seems to me a clear question. I just  
23 want to make sure I know what your answer is.

24 I think the question that has been put to you is that  
25 maybe I'll say it this way: Other than anything having to do

D1FJMED3

Larnholt - cross

1 with what, the substance of what was contained in Article 2.2,  
2 in your view, did 3M do anything else wrong?

3 THE WITNESS: So not related to the 2.2? Can you  
4 repeat that again?

5 THE COURT: Let's do it this way: You have indicated  
6 one thing you have indicated what 3M in your mind did wrong.

7 What else did they do wrong?

8 THE WITNESS: They represented that they had given us  
9 all material agreements.

10 THE COURT: What else? And what material agreements  
11 didn't they give you?

12 THE WITNESS: The agreement that we had to reduce the  
13 price in the largest country.

14 THE COURT: Anything else?

15 THE WITNESS: (Pause)

16 THE COURT: Yes or no or I don't know?

17 THE WITNESS: I don't know.

18 THE COURT: If you don't know, you don't know.

19 Anything else they did wrong?

20 THE WITNESS: Yeah, I think they should have  
21 represented or given all the information that's the way the  
22 business was going forward.

23 THE COURT: Anything else?

24 THE WITNESS: Can I think about it a bit and come  
25 back?

D1FJMED3

Larnholt - cross

1 THE COURT: Sure. Yes. Is that answering your  
2 question?

3 MR. COLLINS: Yes. Thank you, your Honor.

4 THE COURT: If you think of anything else, you may  
5 supplement your testimony.

6 THE WITNESS: Thank you.

7 BY MR. COLLINS:

8 Q. Now, sir, you were part of the due diligence team in  
9 connection with the transaction with 3M, correct?

10 A. That is correct.

11 Q. Who was in charge on the Meda team of due diligence for  
12 pricing issues?

13 A. That would go into -- it would depend if it is an agreement  
14 or if it's market and sales. I think we heard Mr. Dierks  
15 earlier today that it was taken care of marketing and sales. I  
16 instructed our legal advisors to go through all agreements in  
17 the database.

18 Q. Was there one person on the team who was in charge of  
19 making sure you understand the pricing issues in connection  
20 with the products that we're thinking about buying in  
21 connection with this business?

22 A. I think you can maybe say it was a shared responsibility  
23 where we also share the information. Jorge-Thomas Dierks was  
24 taking care of the marketing and sales. We had another person  
25 taking care of safety and regulatory IP. It might have that

D1FJMED3

Larnholt - cross

1 bearing on that. We had our legal advisors going through the  
2 documents, the agreements that might have a bearing on to that.

3 No, it was not one specific person who was only doing  
4 that. There was a team overseeing the whole due diligence  
5 process.

6 Q. Did you have any involvement in analyzing pricing issues?

7 A. Can you repeat this?

8 Q. Did you have any involvement or responsibility in analyzing  
9 and investigating pricing issues in connection with this  
10 transaction?

11 A. My responsibility was basically coordinating, and usually  
12 when I do due diligence, I very much carry on the contractual  
13 side to see what our advisors, our legal advisors are coming up  
14 with through their review of all agreements.

15 Q. I think you said you were coordinating the effort?

16 A. Yes, you can call it that.

17 Q. Does coordinating include saying all right, you're in  
18 charge of investigating pricing?

19 A. You know, we have been doing so many transactions, so we  
20 can basically take a company and everyone knows what they  
21 should be looking at. It is standard. I don't have to send my  
22 senior executives to look at it. He knows what to look for.

23 I make sure going into the data room and saying okay,  
24 this is very big data room so let's make sure we have the  
25 appropriate due diligence team on board with internal people

D1FJMED3

Larnholt - cross

1 and also a lot of external advisors, and we never had this  
2 large team of external advisors in another deal.

3 (Continued on next page)

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DlfQmed4

Larnholt - cross

1 BY MR. COLLINS: (Continued)

2 Q. But, sir, having a large team is different from making sure  
3 that everybody on that team is tasked appropriately, correct?

4 A. Correct. We, as I said, we've been doing the due diligence  
5 so many times, so I would imagine that if anyone had a problem  
6 in an area they needed more help, he would come back to me or  
7 come back to Anders Lonner and say let's involve the person for  
8 this or that.

9 Q. Could you give me the names of the -- you did already. I'm  
10 sorry, could you give me the names of the people who were to  
11 focus on this pricing in connection with transaction?

12 A. As I said, it's joint responsibility but, it comes into  
13 different areas. First of all, you have it in the offering  
14 memorandum, in the presentation where it comes to pricing, and  
15 we are -- we are operating in Europe, we know that there's  
16 usually some percentage points adjustment in pricing every  
17 year, that's no different. So when I assign different persons,  
18 as I said, you're to move there to marketing sales which would  
19 contain some pricing information. Also, Marten Osterlund who  
20 was reviewing regulatory safety, intellectual property, etc.  
21 So if he found anything out of the ordinary that was different  
22 from the offering memorandum and the management presentation,  
23 he would flag that. The legal advisers were going through all  
24 the contracts. If they found any material issues, they would  
25 flag that in our summary reports that we were reading.



DlfQmed4

Larnholt - cross

1 Q. Now, sir, you yourself spent less than 20 minutes looking  
2 in the electronic data room, is that correct?

3 A. As I said usually, we coordinate. I looked at the scope of  
4 the data room, how big it is, and then we discuss who should be  
5 involved in the team to look at these things, and who are the  
6 advisers that would need help. If it was a small company, five  
7 documents, I would have read all of them myself in the data  
8 room. But here was different. It was huge data room. So we  
9 make sure to have appropriate due diligence team and legal and  
10 external advisers.

11 Q. And this was a big transaction for Meda, correct?

12 A. Yes, it was a large transaction.

13 Q. As far as the price that you were thinking about paying,  
14 that was significant to Meda, correct?

15 A. Correct.

16 Q. And am I correct, sir, that France under this deal was  
17 going to be a big potential -- 3M's business in France was --  
18 as part of this transaction was a significant aspect of the  
19 transaction, correct?

20 A. 3M France was significant, yes.

21 Q. Am I correct, sir, that the drug Flecaine was a substantial  
22 aspect of this transaction?

23 A. Correct.

24 Q. I think you say that the conventions dealing with Flecaine  
25 somewhere in your witness statement, I could find it for you,

DlfQmed4

Larnholt - cross

1 sir, was a really important aspect of this deal, right, is your  
2 allegation?

3 THE COURT: Can you point to a paragraph, Mr. Collins?

4 MR. COLLINS: Sure. Paragraph 95.

5 A. 95?

6 Q. Yes, paragraph 95.

7 A. Yes.

8 Q. Am I correct, sir, that the revenues and profits being  
9 generated by 3M for the drug Flecaine was a significant issue  
10 for you in connection with this transaction, correct?

11 A. Can you repeat the question again?

12 Q. Am I correct, sir, that the revenues and profits that 3M  
13 was generating from Flecaine in France was a significant issue  
14 for Meda?

15 A. You say that the -- when we were reading the offering  
16 memorandum, if the issue of sales was a problem?

17 Q. No, I'm not saying it's a problem, sir. Am I correct, sir,  
18 that Flecaine was a critical part of the assets that you were  
19 purchasing?

20 A. It was certainly an important part, yes.

21 Q. And, therefore, the revenues and profits that were being  
22 generated from Flecaine in France by 3M was a very important  
23 issue for Meda, correct?

24 A. When you say issue, you mean problem or maybe I interpret  
25 the word --

DlfQmed4

Larnholt - cross

1 Q. No, just something you wanted to understand, saying let's  
2 make sure we understand the revenues and profits from Flecaine  
3 in France that 3M generated, so we can determine whether we  
4 want to buy this asset.

5 A. That was one part that was important for sure, and that's  
6 why we also felt very comfortable in having Jorg-Thomas Dierks,  
7 who just testified, on board because he's also very  
8 knowledgeable in French and in France and in this area.

9 Q. Who was in charge of investigating 3M's business with focus  
10 on Flecaine in France?

11 A. Well, again, if it comes to agreements, we would pick it up  
12 through the legal advisers and their analysis. If it comes  
13 anything into regulatory safety, intellectual property, it  
14 would be picked up from Marten Osterlund. If it was anything  
15 on the financial side, it would be picked up our financial  
16 advisor, our CFO, or person working for him. Or if Jorg-Thomas  
17 Dierks had identified anything, he would identify it. It was a  
18 small core team that were looking into everything, and when we  
19 rely on that all the material and information is here.

20 Q. Were there any CEPS conventions in the electronic data  
21 room?

22 A. I don't think so.

23 Q. Were there any conventions or similar type documents from  
24 other countries in the data room?

25 A. I don't know.

DlfQmed4

Larnholt - cross

1 Q. Sir, did you ever ask anyone from 3M "Have you given us all  
2 the CEPS conventions"?

3 A. I made sure to ask them to give us all material  
4 information, specifically all material agreements. That's key,  
5 to be given all material information when you do a deal.

6 Q. My question, sir, though, is did you specifically ask  
7 anyone from 3M "whether you've given us all the CEPS  
8 conventions"?

9 A. If I ask that, no, because at the time, as I said in my  
10 declaration or in my deposition, that I heard about CEPS, I  
11 mean, there are different names for every country of different  
12 pricing authorities, and I know many of them, but not all. So  
13 I heard about CEPS, but not about conventions where I  
14 specific -- but I specifically asked "have you given us all  
15 material agreements."

16 Q. Did you ask anyone from 3M, you, did you ask anyone in 3M  
17 whether -- "have you given us all your documents with CEPS"?

18 A. No, my question has been only on the legal side, "have you  
19 given us all material agreements," and they represented that  
20 they had.

21 Q. Now, I'm going to ask you another question. I'm just  
22 asking you about CEPS conventions. Are you aware of anyone  
23 from Meda asking for CEPS conventions from 3M?

24 A. I'm not aware. It's what I say, I'm very well aware that  
25 we asked for all material agreements and all material and

DlfQmed4

Larnholt - cross

1 relevant information, but I cannot say that we asked this or  
2 that. In many of the breakout sessions, telephone conference  
3 and due diligence I was not part, so I cannot testify to what  
4 others did or did not ask.

5 Q. Now, sir, you say, "Upon learning of the CEPS agreement" --  
6 this is paragraph 95 --

7 A. Sorry, paragraph?

8 Q. 95.

9 A. Yes.

10 Q. You say, "Upon learning of the CEPS agreement, I was  
11 totally shocked."

12 Do you see that?

13 A. Yes.

14 Q. Now, sir, you were aware in December -- and this is -- when  
15 did you first learn of it?

16 A. About, I believe it was, roughly one year after closing.

17 Q. Now, sir, you were aware prior to January 1, 2007 that 3M  
18 thought there was a possibility of a 10 percent reduction,  
19 correct?

20 A. On one product, yes.

21 Q. And that's Flecaine, right?

22 A. Yes.

23 Q. Would that be Flecaine LP?

24 A. Or IR, I don't remember.

25 Q. Did you understand whether the 10 percent was referring to

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1 just LI or LI and LP?

2 A. I don't remember. Maybe we can see the answer.

3 THE COURT: Did you see -- I'm going to do our lunch  
4 break at quarter of, so about four more minutes.

5 MR. COLLINS: OK.

6 THE COURT: What are we looking at?

7 MR. COLLINS: 384 which was used earlier today.

8 Before I go to that --

9 THE COURT: This has a JX equivalent?

10 MR. ARMENIO: Yes JX-116, your Honor.

11 THE COURT: 116.

12 Q. Sir, I don't see you copied on this document, but it's a  
13 document dated October 3, 2007. Do you see that?

14 A. Yes.

15 Q. In this document, Nicole -- you'll have to say the rest of  
16 Nicole's name. We'll just refer to her as Nicole, OK?

17 A. Yes, that's fine.

18 Q. The second Nicole paragraph, "My personal recommendation  
19 would be to plan for 15 percent reduction as of July 1, 2008."  
20 Do you see that?

21 A. No.

22 Q. The second full paragraph from the bottom.

23 A. OK. Yes. Thank you.

24 Q. Were you aware of that on or about this time period?

25 A. Yeah, I think what I'm sure, as you've already stated, I'm

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1 not part of this email. I'm trying to think back to 2008, and  
2 I remember that we had to -- it became in effect that we had to  
3 decrease the price to roughly 10 percent one year and maybe  
4 something around 20 another year, but if it was exactly on June  
5 1st, I don't recall.

6 Q. OK. Sure. Well, my question is in this October 2007 time  
7 frame, were you aware that the Meda people were talking about  
8 "maybe we should -- there's a possibility of a 15 percent  
9 reduction"?

10 A. I don't recall exact percentages. I know we said of course  
11 that we had to reduce, we had to reduce. And how much it was,  
12 you know, at this time I was also running -- well, actually, I  
13 would go promoting from what I did before to running the Nordic  
14 operations, so I was not really part of this. I was part when  
15 it came to external communication.

16 Q. My question is prior to December of 2007, were you aware of  
17 people in Meda talking about possible price reductions for  
18 Flecaine in France?

19 A. Repeat once again, please.

20 Q. Prior to December of 2007, were you aware of discussions  
21 within Meda about possible price reductions for Flecaine in  
22 France?

23 A. No, I think I heard, of course, before that we had a risk  
24 of 10 percent price decrease which had been between signing and  
25 closing and it came to my attention; but from when the deal

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Larnholt - cross

1 closed, I was, you know, head of the Nordic region, so I was  
2 not involved in this.

3 Q. Now, sir, were you shocked by when you heard 10 percent  
4 prior to the deal closing?

5 A. I was very concerned when I saw this 10 percent, and I  
6 wanted to understand what we had seen and what is reflected in  
7 the figures that we have relied upon.

8 Q. Despite learning of the 10 percent, Meda closed the  
9 transaction anyway, correct, on or about January 2, 2007?

10 A. That is correct. We, as I said -- no, I didn't say it, but  
11 of course when I got this information, I called Dr. Jorg-Thomas  
12 Dierks and I asked him his opinion about this, and he confirmed  
13 to me the risk for the 10 percent price decrease was a risk and  
14 was not a fact, and it was also included in the financial  
15 numbers. And then we decided that together with Anders Lonner,  
16 the CEO, to sign -- not to sign, but to close.

17 THE COURT: Let's take our lunch break and resume --  
18 I'd like to make up for some lost time this morning. So let's  
19 start in 45 minutes at 1:30.

20 (Luncheon recess)

21 AFTERNOON SESSION

22 1:30 P.M.

23 (In open court)

24 THE COURT: Continue with the cross-examination of  
25 Mr. Larnholt. And I do advise you, you are under oath.



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Larnholt - cross

1 Go ahead, Mr. Collins.

2 MR. COLLINS: Thank you, your Honor.

3 CROSS-EXAMINATION

4 BY MR. COLLINS: (Continued)

5 Q. Going back to the document on the screen October of '07, in  
6 a prior answer when we were talking about this document, you  
7 said something to the effect "At this time we had to reduce the  
8 price." Does that sound familiar when we're talking about the  
9 substance of this document?

10 A. No. As I said, we were informed between signing and  
11 closing that there was a risk between all attempts and price  
12 decrease. So I would assume there would be discussion about  
13 that throughout that year, the coming year, but I did not  
14 discuss. I'm not even part of this email.

15 Q. No. I was referring to your prior answer. I wasn't saying  
16 you were part of the discussion, so I apologize.

17 Sir, when you found out about this risk of a  
18 10 percent increase --

19 A. 10 percent decrease.

20 Q. Decrease, apologize, yes. Did it occur to you to say,  
21 "Let's stop the closing, let's not go forward and investigate  
22 this"?

23 A. My investigation was directly again on the phone with the  
24 Dr. Jorg-Thomas Dierks, and I called him up, and I said, "OK,  
25 what do you think about this?" And he said, "This is a risk,

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1 it's not a fact." And he had confirmed that it was also in the  
2 figures, and, therefore, in our valuation. So I did not see  
3 that that would be a showstopper to the deal.

4 Q. Did you contemplate at all, let's not close and let's  
5 investigate this some more?

6 A. Yeah, that was the first thought that appeared in my mind.  
7 Sure.

8 Q. Was it solely based on your conversation with Dr.  
9 Jorg-Thomas Dierks that you decided that, no, I'm no longer  
10 going to think about possible delay in closing?

11 A. I called Dierks, and I remember I was having discussions  
12 with Henry Stenqvist and Anders Lonner if this would have an  
13 effect on closing, but since it was reflected in the figures,  
14 it was only a risk. I thought from my perspective that it did  
15 not change the real valuation because it was based on the  
16 figures that we had. So based on that, I thought that we  
17 should go ahead with closing.

18 Q. Did you do anything else to investigate this issue other  
19 than what you just told us about?

20 A. No, I don't think so.

21 Q. Did you based on investigation and the other facts you had  
22 make or made a choice to close in spite of that risk?

23 A. Yeah, we closed, that's true.

24 Q. I know you're not part of the document on the screen. I  
25 think I showed you earlier the second to last paragraph where

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Larnholt - cross

1 people are talking about a plan for a 15 percent reduction. Do  
2 you see that?

3 A. Yes.

4 Q. Was there any anger or panic in the company that bubbled up  
5 to you about the 15 percent possibility?

6 A. No. As I said, I know about this -- the risk that appeared  
7 between signing and closing. And I think the next point when I  
8 got involved when I saw this -- the agreement to reduce the  
9 price of 50 percent, which was one year later after closing.  
10 But what I was referring to, I saw here 2008, and I remember  
11 something in the future that we had describe to our  
12 shareholders that we had to take price decreases, but that  
13 comes later.

14 Q. But as far as in the fall of 2007, a concern about planning  
15 for a 15 percent reduction didn't bubble up to people of your  
16 stature, correct?

17 A. I don't recall sir, no. And, again, I was at this time  
18 running the Nordic operations, and that was my focus.

19 Q. Sir, in paragraph 71 of your witness statement or your  
20 declaration, page 23, you talk about how Meda was well aware of  
21 the pricing pressures felt in all markets including France,  
22 right? All markets in Europe including France?

23 A. Correct.

24 Q. Is that an issue that you were aware of; not just Meda  
25 generally, but you yourself?

DlfQmed4

Larnholt - cross

1 A. Yeah. Here when we speak about pricing pressures, it's  
2 very, very different from this agreement. Pricing pressure has  
3 not been a thing that's happened over the last year. It's been  
4 going on for decades in Europe. And you can see pricing  
5 pressure a couple percentage points per year across -- I mean,  
6 it will be different for different markets, but usually pricing  
7 pressure is a couple of percentage points. That's what I mean  
8 with pricing pressure, and that's standard in Europe. And I  
9 think there was also information on that in a 3M management  
10 presentation in St. Paul that they had also explained that the  
11 pricing pressure is roughly a couple of percentage points.

12 Q. And the existence of pricing pressures you're referring to  
13 included France, correct?

14 A. Yes.

15 Q. Going to paragraph 78 of your witness statement or  
16 declaration --

17 A. I'm sorry, I couldn't hear you.

18 Q. I'd like you to refer you to paragraph 78 of your witness  
19 statement, page 26.

20 A. Yes.

21 Q. In the paragraph you state, "In the data room to which 3M  
22 made access for purposes of conducting due diligence, 3M  
23 included numerous documents and agreements relating to the  
24 prices of 3M's products."

25 Do you see that?

DlfQmed4

Larnholt - cross

1 A. Yes.

2 Q. Is that something you were aware of during the due  
3 diligence process or is that something you learned afterwards?

4 A. I mean, it's -- that documents and agreements are in the  
5 data room including prices. You know, we reviewed a lot of --  
6 I mean, I would assume all the agreements that were in the data  
7 room which I saw summaries of. We were focused on all these  
8 agreements down to the very small ones. Of course, different  
9 agreements contain different prices. I remember spending a lot  
10 of time looking at some distribution agreements with Algifor  
11 that had prices, and how those licenses could affect the deal.  
12 So in agreements usually there are prices, but, again, we had  
13 lawyers looking through making the summaries for us so we could  
14 read it.

15 Q. So you were looking at pricing issues, you were looking at  
16 pricing issues during the due diligence process?

17 A. We were all looking at the issues. As I said before, I was  
18 looking from a legal perspective. We had financial advisor and  
19 our financial team. Dr. Jorg-Thomas Dierks, so we were all  
20 looking at all relevant information.

21 Q. Is that something that Meda generally looks at in  
22 connection with acquisitions?

23 A. We want everything that's general -- material to the  
24 business, for sure. We want that to be up front. We certainly  
25 do not want to find it in the data room. If I would have found

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Larnholt - cross

1 something like this, I mean it would have been the lawyers red  
2 flag if we had discovered this during due diligence. That is  
3 not the place where you should find this. It should be in the  
4 information memoranda.

5 Q. Did it occur to you during the due diligence process of  
6 "where are all the CEPS conventions"?

7 A. As I said before, I knew of the word CEPS that was the  
8 pricing authority, and there are pricing authorities in every  
9 country in Europe. So I was not -- I was reading the summaries  
10 that we had from our legal advisers, and, you know, looking  
11 through all that.

12 Q. As you're reading those summaries in connection with the  
13 due diligence process, did it ever occur to you there's no  
14 summary of the CEPS conventions?

15 A. No, because I know that when prices are publicly, you know,  
16 they are agreed between companies and then the authorities,  
17 they're usually listed.

18 Q. The price, right, sir?

19 A. The price and reimbursement are usually listed in -- what  
20 do you call it -- publicly, it could be bank things, it could  
21 be on the internet, different places. They are public. So I  
22 was not looking for that.

23 Q. But CEPS conventions have information other than price in  
24 them correct, or do you know?

25 A. I had learned that afterwards, yes.

DlfQmed4

Larnholt - cross

1 Q. You didn't know that at the time?

2 A. No.

3 Q. Sir, I refer you to paragraphs 47 and 48 of your witness  
4 statement which are on pages 13 and 15.

5 A. 47 and 48?

6 Q. Yes. I am going to refer you to -- I'm going to ask you  
7 just a couple of questions about this.

8 A. Can I read them both, please?

9 Q. Take your time.

10 (Pause)

11 A. OK.

12 Q. In these paragraphs, you're referring to a -- you were  
13 permitted to ask questions of 3M through a written spreadsheet  
14 process?

15 A. That's one part of it. Of course, there are many other  
16 sides of asking questions. I think in also 48 it refers to  
17 that we were asking questions in the breakout session, the  
18 presentation, and telephone conferences.

19 Q. Right. And I'm limiting my questions or next couple of  
20 questions just to this written spreadsheet process.

21 A. Yes.

22 Q. Did you have involvement in that?

23 A. Yes, usually as I coordinate due diligence in the beginning  
24 of these transactions, I -- this is often how the advisers want  
25 you to do -- to field their questions, besides telephone

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Larnholt - cross

1 conferences and presentations, and breakout sessions that they  
2 want to filter. Usually starts like that, but as the process  
3 evolves, both sides I will not say ignore this, but, you know,  
4 they leave it because it's a constant interaction all the time.  
5 You don't start popping up your Excel sheet. So this is how it  
6 starts, but it evolves in a constant flow of communication.

7 Q. But as far as this process, were you the one that people  
8 filtered their questions to and you sent them to Goldman?

9 A. As I said, in the beginning it was like that, and that's my  
10 recollection as mostly it is; but the further we progress, you  
11 leave this. I mean, there's constant dialogues, and if our  
12 financial advisors want to speak directly to them, you know,  
13 they give them a call and they have discussions.

14 Q. I understand that maybe to a certain extent you're the one  
15 coordinating and then maybe other people are asking directly or  
16 indirectly. Were you still part of the process? Were you  
17 still reviewing the questions that were being asked and the  
18 responses that you were receiving?

19 A. No, we were trusting people that they did their job, and  
20 their due diligence. What we do is, of course, since there is  
21 open flow of communication here, and we sit in the same  
22 corridor, me, Anders Lonner, Henry Stenqvist, Marten Osterlund  
23 and the others, we have constant communication, things we see,  
24 what should we address, what should we do?

25 Q. So was it someone's job at Meda to make sure we're asking



DlfQmed4

Larnholt - cross

1 all the questions we want in connection with the spreadsheet  
2 process and we're getting all the answers we want?

3 A. You have to repeat that with a spreadsheet process. As I  
4 said, that's something you hear in the beginning when maybe 3M  
5 has 10 or 20 different things they want to filter, they want to  
6 see what questions comes in. But the further you progress, and  
7 we had ones that were negotiating and dealing with 3M, you  
8 don't do it through a spreadsheet. You have open  
9 communication.

10 Q. As far as the spreadsheet process, did Meda ask any  
11 questions in connection with that process about pricing for  
12 3M's pharmaceutical products in France?

13 A. As I said, we -- I copy/pasted questions in the beginning,  
14 it might be a week or a couple of weeks, but then it was open  
15 communications, so ...

16 Q. I'm just asking about this process, the spreadsheet  
17 process. Did Meda ask any questions about pricings of 3M's  
18 pharmaceutical products in France?

19 A. I don't think so.

20 Q. Now, sir, in connection with this transaction, one of the  
21 benefits to Meda that it was looking for were synergies,  
22 correct?

23 A. Getting the products and the organization is, of course,  
24 key. Synergies can be an upside to that, yes.

25 Q. But that was something that Meda was focusing on, were

DlfQmed4

Larnholt - cross

1 synergies values that could be created by this deal, correct?

2 A. Please specify what type of synergies you mean.

3 Q. Let me have JX-080A. Have you seen this document before,  
4 sir?

5 A. Yes, I have.

6 Q. On the page that we're showing you now, it says calculation  
7 Karl Oskar - Assumptions. Karl Oskar is referring to this  
8 potential transaction at the time, correct?

9 A. At the time, but this is the transaction that we decided  
10 not to pursue.

11 Q. OK. But one of the things that were being looked at were  
12 synergies, correct?

13 A. Yeah, it's there in bullet point four.

14 Q. Now, sir, I think you spent some time in your witness  
15 statement talking about the calculation of a value for the  
16 assets that you were purchasing, correct?

17 A. Correct.

18 Q. And that Meda used an EBITDA multiple approach?

19 A. Correct.

20 Q. Am I correct, sir, that in connection with that approach  
21 you used one year of results for 3M's business?

22 A. You cannot really say it's based on one year, yes, but this  
23 is only if the business is stable with consistent cash flow,  
24 then you can take that as proxy going forward. And if those  
25 assumptions are correct, then we can do it like that.

DlfQmed4

Larnholt - cross

1 Q. But you used year 2007, correct?

2 A. Correct.

3 Q. In connection with -- I believe you just testified when  
4 you're using an EBITDA multiple approach, you use that when  
5 there's steady cash flow. Is that what word that you used?

6 A. If we see a business, I mean, we -- this is the type of  
7 business that we have been acquiring, almost all of them, where  
8 we have a stable business or slightly growing. If we see that  
9 type of business, we certainly value such a business using an  
10 EBITDA multiple valuation approach. I mean, there are  
11 different ways to value companies, but this specific valuation  
12 methodology is very appropriate for such types of companies.

13 Q. Did you use other approaches just as -- nothing else other  
14 than -- excuse me -- did you use any other approaches as a  
15 check on this approach?

16 A. You mean for the 3M?

17 Q. Yes.

18 A. Yes, of course. Just calculating that is one part, but I  
19 mean, we do an outside evaluation looking at other types of  
20 comparable companies, how they've been trading previously, done  
21 deals by other companies of similar types of stable assets. We  
22 compare it with our own acquisitions of stable acquisitions  
23 before. We compare it with what other analysts are taking a  
24 view on stable assets, even taking a view on 3M Pharma.

25 Q. Did you consider using a range of years other than just the

DlfQmed4

Larnholt - cross

1 year 2007?

2 A. What do you mean range of years?

3 Q. Like using an average or a median or some kind of stats, a  
4 physical analysis. Instead of just saying "I'm going to take  
5 2007, I'm going to look at other years and apply an analysis  
6 and get certain weight for certain years and other weight for  
7 other years"?

8 A. Yeah, if you would see something that would happen or  
9 rapidly change in the future one or two years out, we would  
10 look at this very differently. It also depends on where you  
11 stand when you're actually taking a view on the acquisition.  
12 So just using an EBITDA valuation and looking at 2009, for  
13 example, will not give the right value because you're also  
14 looking at time value for money. And depending where you are  
15 throughout the year, you might apply an average or looking at  
16 how the current trend is throughout that year.

17 MR. COLLINS: Can I take 30 seconds your Honor?

18 THE COURT: Go ahead.

19 (Pause)

20 Q. Sir, I think you mentioned you looked at comparable  
21 companies, am I correct?

22 A. Correct.

23 Q. What comparable companies did you look at?

24 A. That would be a very long list because, you know,  
25 investment bankers, they value the companies like this also,

DlfQmed4

Larnholt - cross

1 and we meet with bankers more or less every week, and in every  
2 meeting we get constant updates of comparable companies, how  
3 they're trading, comparable future -- comparatively stored  
4 acquisitions, and we can look at those companies. So, I mean,  
5 we always get these lists on the type of EBITDA multiples that  
6 have been trading at or have been acquired at.

7 Q. Does such a list exist, a written list of that? Let me be  
8 more specific. Would there be a written list that exists that  
9 lists the companies and the transactions that you were looking  
10 at?

11 A. Yes, written, it will be in the document, yes, but not  
12 prepared by us. It will be in all these banking presentations  
13 that we have whole stacks of at Meda.

14 Q. Sitting here today, do you remember any of the comparable  
15 companies that you mentioned?

16 A. I think I said it was in my deposition, we were looking at  
17 Schering was one of them. Altana maybe came up, but that was a  
18 large company. And then I would assume that we were looking at  
19 every listed company in Europe because those are always  
20 included in that, and then we would look at every comparable  
21 company transaction that has happened previously. So it will  
22 be -- it would be a very long list, but we can take a look at  
23 those and see the average, etc.

24 Q. So, were there outside consultants helping you with this  
25 EBITDA analysis?

DlfQmed4

Larnholt - cross

1 A. The EBITDA analysis is quite simple to just read these  
2 tables of previous transactions and what they are trading at.  
3 We don't need the help of consultants for that.

4 Q. I just want to make sure I understand. So, you didn't  
5 retain someone specifically to help you with your comparable  
6 company and comparable transaction analysis?

7 A. No, that's something that we get for free more or less  
8 every week with comparable companies and how they are trading.

9 Q. So this was information that you may have gathered over a  
10 period of time that you use, correct?

11 A. Yes. As I said, we would get it's more or less constant  
12 every week.

13 MR. COLLINS: Ten more seconds, your Honor?

14 THE COURT: OK.

15 (Pause)

16 MR. COLLINS: Subject to redirect, that's all I have?

17 MR. ARMENIO: Brief redirect, if I may, your Honor?

18 THE COURT: Yes.

19 REDIRECT EXAMINATION

20 BY MR. ARMENIO:

21 THE COURT: Whenever you're ready Mr. Armenio.

22 MR. ARMENIO: Thank you, your Honor.

23 Q. Mr. Larnholt, I just have a few questions for you. You  
24 discussed with counsel this 10 percent risk of a price decrease  
25 mentioned in December 2006. Do you recall that discussion?

DlfQmed4

Dierks - redirect

1 A. Yes.

2 Q. And do you recall discussing with counsel that it was just  
3 a risk, not a fact?

4 A. Correct.

5 Q. Do you recall discussing that it was made known that this  
6 risk was already in the numbers?

7 A. Correct.

8 MR. COLLINS: Objection. Leading.

9 Q. Do you recall the discussion --

10 THE COURT: Go ahead. Rephrase.

11 Q. Do you recall that general discussion about price risk with  
12 counsel?

13 A. Yes.

14 Q. Do you recall a general discussion that the price risk may  
15 have been in the numbers?

16 A. Yes.

17 Q. Whose numbers?

18 A. Well, we were relying on 3M's numbers.

19 Q. Directing your attention, and I will put it on the screen,  
20 if I could have the Elmo, please. We see in PX-328, let's look  
21 at the top, this is an email from who?

22 A. From Christian Senac.

23 Q. Who is ALT@Meda.SE?

24 A. That is me, Anders Larnholt.

25 Q. Is this discussing who included this 10 percent risk?

DlfQmed4

Dierks - redirect

1 A. Yes, correct.

2 Q. Who included it?

3 A. Benoit Traineau.

4 Q. Let's look back at the top of 328. As of this date, where  
5 was Mr. Traineau employed?

6 A. 3M.

7 Q. You mentioned earlier and had a discussion with counsel  
8 that this agreement, this signed agreement that was not  
9 disclosed, you mentioned that it could have affect on figures  
10 in the offering memorandum. Do you remember that general  
11 discussion?

12 A. Yes. Can you repeat, please.

13 Q. Sure. Do you remember having a discussion with Mr. Collins  
14 about how the CEPS convention, the agreement could affect  
15 figures in the offering memorandum. Do you recall that  
16 discussion?

17 A. Yes.

18 Q. Let's take a look specifically at some of the figures in  
19 the offering memorandum. It's already in evidence PX-168. I'm  
20 looking at table 43. It's on page 80 of the memorandum ending  
21 in 690.

22 MR. COLLINS: Your Honor, I'm going to lodge an  
23 objection. I think it's outside the scope of my cross, outside  
24 the scope of the answers, and it's certainly outside the scope  
25 of my questions.



DlfQmed4

Dierks - redirect

1 THE COURT: Well, you had your moment to object to  
2 that. So overruled, go ahead.

3 Q. Mr. Larnholt, looking at table 43 in the offering  
4 memorandum, what is being discussed in this table?

5 A. That's the P and L for historic, and projected for Europe  
6 the business that we acquired.

7 Q. And what numbers were you trying to explain to counsel  
8 would be affected by this CEPS convention with the 50 percent  
9 price reduction?

10 A. These numbers.

11 Q. Are there any in specific you can explain to us and discuss  
12 for the Court?

13 A. Well, if they had taken into account that the CEPS  
14 agreement with a reduction of 50 percent, that would materially  
15 change the whole business. So, since the pricing agreement  
16 reduces about \$20 million on EBITDA, it takes away one-quarter  
17 of the profits from this company.

18 Q. So let's slow down. This is EBITDA, E-B-I-T-D-A, and we  
19 see at the second row from the bottom of table 43, is that  
20 right?

21 A. Yes.

22 Q. How much would be taken away by the CEPS convention?

23 A. Well, first, to get -- there's also -- first taken away is  
24 roughly \$\$20 million.

25 Q. What do we see under EBITDA? What is percent margin?

DlfQmed4

Dierks - redirect

1 What's that?

2 A. That's the margin taking the EBITDA divided by sales, net  
3 sales.

4 Q. If the price were to drop by 50 percent, could a business  
5 maintain the same EBITDA percentage margin?

6 A. No.

7 Q. Is that possible as a matter of finance?

8 A. Then something would materially change in some of the other  
9 rows, but since they are not, the margin would decrease  
10 throughout the whole P and L of five percentage points, and  
11 that is not happening, so it's a stable business.

12 Q. So what's being presented here by 3M, is this a stable or  
13 unstable business?

14 A. This is a very stable business. This is even growing.

15 Q. With respect to prices, the information that we see on  
16 EBITDA margin percentage, does that tell us that the prices are  
17 stable or unstable?

18 A. It says that the prices are very stable. You can also look  
19 at the gross margin. So you see that's 73 and a half or 73.7,  
20 74.6, 75.5, so it's actually growing. If you will have a price  
21 decrease of 50 percent on a large part of 2007, that margin  
22 will drop five, six percentage points in one year. And there's  
23 nothing else here that can explain why it shouldn't, so --

24 Q. Without going through all of the offering memorandum and  
25 all of the business presentations, are there other instances

DlfQmed4

Dierks - redirect

1 that you believe would have had to be changed had the CEPS  
2 convention been disclosed to Meda?

3 A. Repeat, please.

4 MR. COLLINS: Objection, again, your Honor. It's  
5 outside the scope. Going further and further outside the scope  
6 of my cross.

7 THE COURT: I think you are at the limit. I'll  
8 sustain the objection.

9 MR. ARMENIO: Thank you, your Honor. I think it's  
10 clear enough. Thank you, your Honor. No further questions.

11 MR. COLLINS: Just a couple. And I'll ask counsel,  
12 can I have the first document you used?

13 RE CROSS EXAMINATION

14 BY MR. COLLINS:

15 Q. Sir, you were asked a couple questions about this document,  
16 right?

17 A. Yes, correct.

18 Q. About this 10 percent that you learned of after the  
19 agreement was signed, correct?

20 A. Correct.

21 Q. I think you said that was something that had been  
22 previously disclosed by 3M or did I get that wrong?

23 A. No, I heard here that there was a risk -- I don't know if  
24 this was the first time, but there was a risk of a 10 percent  
25 price increase -- sorry -- price decrease.

DlfQmed4

Larnholt - recross

1 Q. And you testified earlier that you were initially  
2 concerned, but your concerns were relieved because you had been  
3 told that this had been disclosed?

4 A. Say it again, please.

5 Q. Did I understand your testimony earlier, sir, that you were  
6 initially concerned about this 10 percent, but then your  
7 concerns were alleviated when you were told that this had been  
8 previously disclosed by 3M?

9 A. Alleviated, I don't understand the question.

10 Q. Your concerns were resolved. You no longer had those  
11 concerns?

12 A. No. As I said we were -- this certainly became an issue,  
13 and we looked into it all, and since we relied on 3M's figures  
14 and we heard that this was included in those figures, and also  
15 that it was only a risk, not a fact, we decided -- and actually  
16 Dierks said we could probably do better, so we decided to  
17 close.

18 Q. My question is, what figures were you just referring to  
19 that 3M had given you?

20 A. The figures for Europe for Tambacor.

21 Q. But, sir, this document refers to a 2007 plan --

22 A. I cannot hear you.

23 Q. OK. This document refers to a 2007 plan that you received  
24 from Mr. Traineau, correct?

25 A. No, I think I received this email from Christian Senac.

DlfQmed4

Larnholt - recross

1 Q. I'm sorry, but the email says, "Obviously, this risk has  
2 been known by 3M and confirmed by Ben -- Mr. Traineau, who has  
3 included it in his 2007 plan assumption," right?

4 A. What was the question?

5 Q. That's how you learned of it was in connection with the  
6 plan that he presented, not the prior forecast or other  
7 documents you got from 3M?

8 A. I learned of this risk when I received this email. And as  
9 I said, when I saw that, I reached out to Jorg-Thomas Dierks to  
10 understand, and it was included in the projections by 3M that  
11 we relied upon, and it was a risk but not a fact, and Jorg  
12 thought we could have that risk, so we decided to close.

13 Q. It was included in projections that you relied on to  
14 execute the document on November 8?

15 A. Repeat that, please.

16 Q. You said it was included in documents that you relied on?

17 A. My recollection and recollect -- what's the word -- I  
18 recall that these pricing -- decrease in pricing was included  
19 in 3M's projections that we relied upon.

20 Q. Sir, isn't it true that this plan you didn't receive until  
21 after the document was signed? The 2007 plan that's referenced  
22 there.

23 A. Well, as I said, when I saw that this risk, and I was  
24 thinking, OK, how does this affect the deal, is there something  
25 that has not been disclosed to us? Should we stop it or what

DlfQmed4

Larnholt - recross

1 should happen? When I saw this, I called Jorg-Thomas Dierks --  
2 and I've said that over and over again what I did.

3 MR. COLLINS: Your Honor, I don't think this document  
4 was moved for admission, but I would object if it's moved. I  
5 don't object to them asking questions about it.

6 MR. ARMENIO: It had been moved at the beginning with  
7 his declaration, your Honor.

8 THE COURT: What is the number?

9 MR. ARMENIO: PX-328, your Honor. I believe it was  
10 offered with his declaration at the beginning.

11 MR. COLLINS: Then no objection, your Honor.

12 THE COURT: All right.

13 MR. ARMENIO: No further questions, your Honor.

14 THE COURT: Thank you. You may step down,  
15 Mr. Larnholt.

16 (Witness excused)

17 THE COURT: You may call your next witness.

18 MR. ARMENIO: Meda's next witness is Henrik Stenqvist,  
19 and I will be doing the proffer. We will need to have  
20 Mr. Stenqvist come in. He's been sequestered.

21 (Continued on next page)  
22  
23  
24  
25

D1FJMED5

Stenqvist - direct

1 THE COURT: Good afternoon, Mr. Stenqvist. Come on  
2 up.

3 HENRIK STENQVIST,

4 called as a witness by the Plaintiff,

5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 THE COURT: Thank you Mr. Stenqvist. In front of you,  
8 is that your declaration dated December 14th, 2012?

9 THE WITNESS: Yes, it is.

10 THE COURT: Are there any errors or mistakes in the  
11 declaration that you want to draw my attention to?

12 THE WITNESS: No, your Honor.

13 THE COURT: Thank you. Do you swear or affirm that  
14 the testimony contained in this declaration, under penalty of  
15 perjury, is the truth, the whole truth and nothing but the  
16 truth?

17 THE WITNESS: That is true.

18 THE COURT: Thank you. Go ahead. Ms. Brown.

19 MS. BROWN: Your Honor, the only exhibit that we seek  
20 to proffer through Mr. Stenqvist that has not already been  
21 admitted is PX 364.

22 THE COURT: Who is handling this witness?

23 MS. BEVILACQUA: As to exhibits, we do have an  
24 objection to PX 364, also PX 328 and PX 372. These are the  
25 same hearsay objections that were raised at the other time

D1FJMED5

Stenqvist - direct

1 these documents were offered, the hearsay within hearsay issue  
2 you already looked at, your Honor, just to maintain the  
3 objection.

4 THE COURT: Somebody just point me to 364. Which  
5 exhibit number in his declaration is it?

6 MS. BROWN: Exhibit 11.

7 THE COURT: All right. I'll take a look at it. My  
8 ruling will be consistent with what I said to the extent it  
9 raises the same issues, and otherwise I'll take it for what it  
10 is permissibly considered for.

11 I understand, Ms. Brown, that is all you're seeking  
12 additional admission to? 328 was raised, our records show that  
13 was admitted through Mr. Larnholt, okay? 372 was one of the  
14 E-mails we discussed yesterday.

15 MS. BROWN: 372 was raised with Mr. Lonner.

16 THE COURT: I have given my ruling on that. How about  
17 as to the testimony?

18 MS. BEVILACQUA: As to the declaration, Paragraph 54,  
19 the last sentence, nor did, Paragraph 54, nor did 3M disclose  
20 the agreement to Meda, we are objecting to on foundation, 602.

21 MS. BROWN: Your Honor, I didn't think it was a  
22 disputed fact whether the convention had been disclosed to  
23 Meda. Mr. Stenqvist's testimony certainly can stand with the  
24 rest of that.

25 THE COURT: Is this like the date issue?



D1FJMED5

Stenqvist - direct

1 MS. BEVILACQUA: Before Meda in any other way goes to  
2 all of the other different ways we are talking about, yes, and  
3 the date issue, your Honor.

4 THE COURT: You can cross him.

5 MS. BEVILACQUA: Thank you.

6 Paragraph 58, your Honor, the CEPS agreement and the  
7 price reduction for Tambocor CR was clearly material to anyone  
8 considering acquiring the business. I believe any potential  
9 purchaser with knowledge of the CEPS agreement would discount  
10 the value of the business based on his/her view of how  
11 significantly the CEPS agreement would affect the projections.  
12 That is 602 and 701, lack of foundation, speculation and  
13 improper expert testimony and conclusion.

14 MS. BROWN: Your Honor, this testimony is proper under  
15 701 as lay opinion testimony. I think it squarely fits in each  
16 of the subparagraphs there, although we can just look at the  
17 first one, rationally based on the perception of the witness.

18 Each of those statements are rationally based on Mr.  
19 Stenqvist's perception of what was happening at the time, and  
20 also if you look at the second point, helpful to a clear  
21 understanding of the witness' testimony. Mr. Stenqvist's has  
22 done dozens of deals. He has testified already. He has lots  
23 of experience in due diligence and now his testimony is coming  
24 in and being offered as lay witness testimony under 701 (a) and  
25 (b) and (c).

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Stenqvist - direct

1 MS. BEVILACQUA: Your Honor, with respect to those  
2 exceptions noted by counsel, the way I read this sentence is --  
3 we don't have objection if he is testifying about what his  
4 personal experience has been with his negotiations and his  
5 deals, but what the sentence says on its face is he is  
6 purporting to state any potential purchaser would discount the  
7 value based on his or her subjective view, and that is not  
8 something this witness is qualified to testify to. He has not  
9 been offered as an expert and it goes beyond the exception, the  
10 narrow exception allowed under 701.

11 THE COURT: I will take this one for what it is  
12 appropriately considered for.

13 MS. BEVILACQUA: Paragraph 61, your Honor, similar  
14 problem. Accordingly, any agreement that could potentially  
15 materially impact the pricing or sale of Tambocor and price and  
16 sales of Tambocor brand in particular was obviously something  
17 that we -- indeed, any potential investor -- would want to  
18 review and fully understand. It is the, "indeed, any potential  
19 investor" part also under 602 and 701.

20 MS. BROWN: This is the same, we believe  
21 Mr. Stenqvist's has -- this is his lay opinion based on vast  
22 experience with deals, his belief as to what the situation is,  
23 his perception at the time and we believe it is appropriate as  
24 lay opinion testimony under 701.

25 THE COURT: All right. The same response as before.

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Stenqvist - direct

1 MS. BEVILACQUA: 69, your Honor, the price reduction  
2 stated in the CEPS agreement undermined 3M's projections  
3 entirely. Indeed, the significance of sales of Tambocor in  
4 France to the business, 3M's failure to account for a 50  
5 percent price decrease to Tambocor CR in its projections were  
6 to even mention the CEPS agreement to Meda so that it could  
7 adjust projections accordingly, rendered the information 3M  
8 provided to Meda materially false and misleading, and that is  
9 our objection under 602 and 701, your Honor, as a conclusion of  
10 law and ultimate issue in the case to be decided.

11 THE COURT: Well, I will consider it for the purposes  
12 of the conclusion of law and otherwise take it for what is  
13 permissible as an exhibit.

14 MS. BEVILACQUA: Just two more along the similar  
15 lines, Paragraph 82. Sorry. Hang on just a moment, your  
16 Honor. (Pause) Again can I do 82 and 89 together, your Honor?

17 THE COURT: Okay.

18 MS. BEVILACQUA: Because it is the same issue again,  
19 602 and 701. With respect to paragraph 89, we are talking  
20 about the last two sentences.

21 MS. BROWN: Your Honor, I believe these paragraphs,  
22 when I read them, they're speaking directly to the financial  
23 performance of Meda. I just don't know who would be better  
24 situated to talk about that in than Meda's CFO. If the  
25 objection here is he is not an expert and can't talk about

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Stenqvist - direct

1 Meda's financials, I just don't understand the objection. I  
2 think he is giving an opinion clearly, lay opinion exception  
3 under 701.

4 THE COURT: Okay. The last two sentences of 89 I am  
5 not seeing even the previous basis for objection. That is what  
6 you said the last two paragraphs of 89.

7 MS. BEVILACQUA: Last two sentences. It is the  
8 ultimate conclusion, your Honor, to the extent it also draws a  
9 conclusion on damages.

10 THE COURT: All right. I take that neither as expert  
11 testimony nor the legal conclusion as to damage. Otherwise,  
12 I'll consider it for what may admissibly be considered for.

13 82, the same, the same response.

14 All right. So with those objections noted and there  
15 is pending the only new document coming in or requested for  
16 admission is 364, the pending hearsay objection, though, I  
17 assume I'll take a look at it, but assume it is subject to my  
18 previous ruling on the hearsay objections pertaining to  
19 documentation of communications with Mr. Gnawed.

20 Otherwise, with the noted objections and my responses,  
21 Mr. Stenqvist's declaration is admitted.

22 MS. BROWN: Thank your Honor.

23 THE COURT: Go ahead, Ms. Bevilacqua.

24 CROSS EXAMINATION

25 BY MS. BEVILACQUA:

D1FJMED5

Stenqvist - cross

1 Q. Good afternoon, Mr. Stenqvist.

2 A. Good afternoon.

3 Q. You are currently the CFO of Meda, correct?

4 A. That's correct.

5 Q. And you were also the CFO of Meda at the time of this  
6 transaction?

7 A. That is also correct.

8 Q. How long have you been the CFO?

9 A. Since, formally since January 2004.

10 Q. You have been involved in the European pharmaceutical  
11 industry since approximately 1993, correct?

12 A. That's correct.

13 Q. Now, when you were looking at the prospect of acquiring  
14 3M's European pharmaceutical business, you viewed that as an  
15 interesting opportunity for Meda, right?

16 A. That's true.

17 Q. It was interesting because the 3M business would allow you  
18 to add value to Meda's existing platform?

19 A. Yes, that's true.

20 Q. And the value that was going to be added from Meda's  
21 perspective was synergies in combining the two businesses and  
22 you had some products that were in the same therapeutic areas,  
23 cardio and dermatology, namely?

24 A. I would turn it around and say that it was mainly the  
25 addition products into our existing therapeutic areas that was

D1FJMED5

Stenqvist - cross

1 what was attractive with the acquisition.

2 Q. Prior to the acquisition of 3M, you had also been involved  
3 in valuing target company for acquisition of --

4 A. Yes.

5 Q. You're claiming in this case that in valuing the 3M  
6 business, you used an EBITA multiple approach to valuation?

7 A. Yes, we did.

8 Q. You did the same thing in the Viatris acquisition, the same  
9 approach?

10 A. Yes, we did.

11 Q. When the Viatris deal was happening, you were also the CFO  
12 of Meda?

13 A. That's true.

14 Q. Overall the Viatris deal was absolutely larger in terms of  
15 overall dollar figure or --

16 A. Quite similar, I would say, yes, in size.

17 Q. When you were reviewing the valuation information in the  
18 Viatris project, your job, as I understand it, was not to  
19 actually create the model or to calculate a purchase price. Is  
20 that right?

21 A. No, that is right.

22 Q. Instead, what you were doing was you were sort of  
23 performing a check as the CFO? You were given certain assumed  
24 acquisition values, and you analyzed the financials based on  
25 those assumptions?

D1FJMED5

Stenqvist - cross

1 A. That's true.

2 Q. In the case of Viatris, those acquisition values that you  
3 were given, they were given to you by the CEO, Mr. Lonner,  
4 correct?

5 A. Yes.

6 Q. You didn't undertake any independent analysis as to what  
7 that valuation should be?

8 A. No. I dealt with the numbers given certain acquisition  
9 value.

10 Q. You don't know how he derived those numbers?

11 A. No, I don't remember that.

12 Q. You're not aware of any comparable transactions that  
13 anybody looked at prior to doing the Viatris deal, for that  
14 deal?

15 A. Not that I remember.

16 Q. As Meda's CFO, you understand that you have an obligation  
17 to your investors to assure both yourself and your investors  
18 that the deal you're entering into is going to be a good deal  
19 as best you can, right?

20 A. Yeah, sure.

21 Q. That is one important role you play in the way that you do  
22 that when you're assuming values and you're assuming financials  
23 as your primary focus on the debt levels. Is that correct?

24 A. Yes, I would say so, that is the split that we had in the  
25 case of the deal you are speaking about.

D1FJMED5

Stenqvist - cross

1 Q. Because if you're sitting there as the CFO and you're  
2 looking at an assumed purchase price and assumed number for  
3 financials, it is just math to get to the EBITA multiple,  
4 right?

5 A. Can you repeat that?

6 Q. If you're sitting there with an assumed purchase price and  
7 an assumed EBITA financial, it is just the math to get to the  
8 multiple number?

9 In other words, purchase price divided by EBITA equals  
10 the EBITA multiple?

11 A. Yes, that's true.

12 Q. So your primary function is to monitor the debt levels and  
13 establish what you would think is acceptable for that  
14 transaction that could accompany the lenders?

15 A. I would analyze the debt situation, yes.

16 Q. I just want to fast forward to the bid for 3M business.

17 Your role in valuing the target you acquired was the  
18 same as the Viatris deal?

19 A. I participated, I remember I participated in discussions  
20 around the value.

21 Q. When Meda first submitted its bid for the 3M business, it  
22 was a bid for the global business?

23 A. Yes.

24 Q. That bid was based on nothing more than what was contained  
25 in the Goldman Sachs offering memorandum?



D1FJMED5

Stenqvist - cross

1 A. No, that is true.

2 Q. It so happened before any due diligence started?

3 A. Yes.

4 Q. As you progressed, you eventually submitted a binding offer  
5 for 825 million for the European business, correct?

6 A. That's correct.

7 Q. In reaching that purchase price, you did not ascribe any  
8 particular value to any particular product in any particular  
9 market. It is not like you went in and said we expect Tambocor  
10 CR in France to do X?

11 A. We used 3M's financial model as the basis for our analysis.

12 Q. Right, but your analysis didn't actually ascribe any  
13 particular value to any particular product?

14 A. No, that is true.

15 Q. You personally did not look at any other comparable  
16 transactions in evaluating the purchase price for the 3M  
17 business?

18 A. I did not personally do that, no.

19 Q. Again what you were focused on wasn't the multiple or the  
20 projected EBITA, but the impact that this deal would have on  
21 Meda's financial position?

22 A. I was also focused on the projected EBITA.

23 Q. I am sorry. When you say the projected EBITA, do you mean  
24 as projected by 3M or do you mean the EBITA multiple?

25 A. You can't separate the two.

D1FJMED5

Stenqvist - cross

1 Q. When you predominantly debt financed, this transaction was  
2 what you were most concerned about is the debt ratios, correct?

3 Your primary job was to monitor the debt ratio?

4 A. Yes, the financial position, yes.

5 Q. Just so I understand what it was when Meda was using this  
6 EBITA multiple model, its purchase price divided by EBITA  
7 equals the multiple, right?

8 A. Yes.

9 Q. You had the 2006 3M EBITA from the 3M financial model you  
10 mentioned, and you assumed a multiple range, you assumed a  
11 multiple between 9 and 10, correct?

12 A. We were actually using the 2007 multiple.

13 Q. So estimated 2007 EBITA?

14 A. Yeah.

15 Q. My mistake.

16 So you had the estimated 2007 and then you had an  
17 assumed multiple range for the EBITA multiple between 9 and 10?

18 A. Yes, during this process, yes.

19 Q. And then the purchase price you ultimately agreed on is  
20 really just a function of the math?

21 A. Yes.

22 Q. You have an enumerator and it is three variables and you  
23 know two of them?

24 A. Yes.

25 Q. I would like to look at a presentation that you made.

D1FJMED5

Stenqvist - cross

1 MS. BEVILACQUA: This is JX 106, your Honor.

2 THE COURT: Okay.

3 BY MS. BEVILACQUA:

4 Q. Do you recognize at least the cover page of this  
5 presentation?

6 A. Yeah. I would have to see more slides.

7 Q. We'll show you some more.

8 A. Sure.

9 Q. Fair enough.

10 THE COURT: Can the witness be handed the whole  
11 document?

12 MS. BEVILACQUA: Yes, he can, your Honor.

13 (Pause)

14 BY MS. BEVILACQUA:

15 Q. This is a presentation that you made to your lenders or  
16 your banking syndicate in late November 2006, correct?

17 A. Correct.

18 Q. So this is post-signing of the acquisition agreement but  
19 prior to closing?

20 A. Yes.

21 Q. What I want to focus on for a moment is the slide, and the  
22 slides aren't numbered, so I will use the Bates number in the  
23 bottom-right-hand corner in the page, Bates under 1425.

24 A. Okay.

25 Q. In this slide you were showing that the combined product

D1FJMED5

Stenqvist - cross

1 sales for Meda and 3M after the acquisition closes first,  
2 right?

3 A. Yeah.

4 Q. And what you're telling your investors, your bankers is  
5 that no product is greater than 13 percent of the overall  
6 business revenue?

7 A. Correct.

8 Q. Right?

9 And that the top 10 products together equal  
10 approximately 58 percent of revenue?

11 A. Yes.

12 Q. This was important for your lenders because it was  
13 important to know that there was good diversification between  
14 the different products and the different markets, correct?

15 A. Correct.

16 Q. Now I want to talk to you just a little bit about forecast.

17 As I understand your claim in this lawsuit, it is that  
18 the March 2003 convention between 3M Sante and CEPS imposed an  
19 immediate 50 percent price reduction risk on the most important  
20 product in the most important market, and that CEPS then asked  
21 Meda to reduce the price of Flecaine LP in France by 50  
22 percent, and that's substantial in your view? That is a  
23 substantial reduction?

24 A. That is a very high reduction, yes.

25 Q. And so I want to talk to you a little bit about how Meda

D1FJMED5

Stenqvist - cross

1 accounted for what you are claiming is a substantial reduction  
2 in a significant product.

3 Now at the time of closing, you had already completed  
4 the fiscal year budget for 2007. Is that right?

5 A. That's true.

6 Q. In order to create a budget for the combined entity going  
7 forward, you took the numbers that each 3M subsidiary gave you  
8 and had forecasted for their 2007 operating plans and you  
9 incorporated them into the Meda plan?

10 A. Yeah, so in each market we combined the plans for the  
11 ex-Meda basis for the ex-3M basis into a counter plan.

12 Of course, the 3M part of that input came from the 3M  
13 people themselves, who would know the business that they did.

14 Q. So for France specifically, you took the 2007 3M France  
15 operating plan and you adopted it wholesale and you made no  
16 changes to it?

17 A. No major changes that I have ever heard about on that local  
18 level.

19 Q. I'd like to show you JX 109. Now, you found out in  
20 December 2006 that the 3M France 2007 operating plan included a  
21 10 percent decrease in the price of Flecaine LP, correct?

22 Sorry, can you highlight the top E-mail, please. Just  
23 bring it up so we can all see it. So the top E-mail is an  
24 E-mail from Mr. Dierks, copied to you on December 13th, 2006,  
25 asking whether the contract foresees any kind of mechanism, and

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Stenqvist - cross

1 what he is referencing here --

2 MS. BROWN: Your Honor, I would really prefer if the  
3 witness had the exhibit in front of him. It makes me  
4 uncomfortable he can't see everything in context. I just don't  
5 remember if there is a second page to this E-mail.

6 THE COURT: Do you think we can do that?

7 MS. BEVILACQUA: Sure.

8 THE COURT: Yes, Ms. Bevilacqua.

9 (Pause)

10 THE COURT: This is --

11 MS. BEVILACQUA: The copy I had, your Honor, has the  
12 DX number on it, but I believe it is JX 109.

13 THE COURT: All right, which is in. Go ahead.

14 BY MS. BEVILACQUA:

15 Q. So maybe if we start at the bottom E-mail first on the  
16 page, we have seen different iterations of this throughout the  
17 day, but it says that Benoit Traineau has advised me there is a  
18 current risk of a 10 percent price decrease of Flecaine CR,  
19 i.e., risk of 4 million Euro price decrease on an annual basis.

20 you received this E-mail shortly after from  
21 Mr. Dierks, correct?

22 A. That's correct.

23 Q. This is the first time you understood there was a 10  
24 percent price risk decrease built into the 2007 operating plan?

25 A. Yes. At this time I didn't even think we knew it was built

D1FJMED5

Stenqvist - cross

1 in.

2 Q. But, yes, but this is the first reference to the 10 percent  
3 price decrease --

4 A. Yes.

5 Q. -- that you were aware of?

6 A. Yes.

7 Q. When you received -- you did find out it had been built  
8 into the 2007 operating plan by 3M France, correct?

9 A. Yes.

10 Q. When you found that out, did you request any further due  
11 diligence?

12 A. No, because we were informed that this was already included  
13 in the financial models from which we based our valuation, so  
14 there was not so much to do about it, in my opinion.

15 Q. You did not attempt to trigger the material adverse event  
16 clause in the acquisition agreement, did you?

17 A. No, I did not.

18 Q. This was prior to the closing, so there was still time to  
19 do that, correct?

20 A. This was between signing and closing, so the agreement had  
21 already been signed.

22 Q. Right. You didn't negotiate any terms, any additional  
23 terms to any local closing documents or local closing contracts  
24 for the individual countries based on this 10 percent, correct?

25 A. No.

D1FJMED5

Stenqvist - cross

1 Q. Nor did you actually seek a guarantee from 3M for the price  
2 of Flecaine in France, correct?

3 A. No.

4 Q. The 10 percent reduction --

5 A. But remember this was not a fact; this was a risk.

6 Q. I understand.

7 In fact, the 10 percent budgeted for risk reduction in  
8 Flecaine LP for 2007 never happened?

9 A. No, it did not.

10 Q. In developing your forecasts as the CFO for Meda, that is  
11 something that is important to you that they be as accurate as  
12 forecasts can possibly be, right?

13 A. That's right.

14 Q. There is always some guesswork going forward?

15 A. There are estimates, yes.

16 Q. You take steps to make sure that your budgets and your  
17 forecasts are accurate as they can be?

18 A. Yes, I do.

19 Q. Part of that process is you involve your country managers  
20 and local people in building up the budgets?

21 A. Yes, it is bottom-up.

22 Q. You would expect those local individuals to have knowledge  
23 about the products in your portfolio, the local pricing  
24 pressures and other local concerns that might impact the sales  
25 or price of your products?



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Stenqvist - cross

1 A. Of course.

2 Q. Then the local people report up the chain to you and  
3 ultimately you have a full-year budget?

4 A. Yes.

5 Q. With respect to integration of the new 3M portfolio into  
6 Meda's, your country teams undertook this same process,  
7 especially to make sure that they're getting understanding of  
8 all the new products that are coming into the portfolio?

9 A. Yes, it was a similar budgeting process, yes.

10 Q. And they're looking at again the pricing issues and the  
11 regulatory environment in each country as doing the same thing  
12 within Meda's region of operation, correct?

13 A. Broadly speaking, yes.

14 Q. In fact, shortly after the closing, your team in France  
15 undertook an analysis of pricing pressures and evaluated the  
16 probability of a price decrease for Flecaine LP to be zero to  
17 15 percent for fiscal Year 2007?

18 A. I am not so aware. Could you repeat that.

19 Q. Yes. Your team in France shortly after the closing in 2007  
20 undertook an analysis of pricing pressures and evaluated the  
21 probability or risk of a price decrease for Flecaine LP of zero  
22 to 15 percent for fiscal Year 2007?

23 A. Not that I'm aware of.

24 Q. But this is something that you would be instructing your  
25 people to do, to create budgets that are accurate and

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Stenqvist - cross

1 accounting for the risks, yes?

2 A. Yeah, that is true, but I am not aware of any specific  
3 French analysis from that period.

4 MS. BEVILACQUA: Your Honor, now I would like to offer  
5 Defendant's Exhibit 588. I know Mr. Armenio is going to have  
6 the same objection.

7 MR. ARMENIO: Objection number -- third time. Not an  
8 author, not a recipient, not a copy person, no foundation  
9 whatsoever. They had access to Mr. Senac, the seven-hour  
10 deposition, never asked him about it. Mr. Traineau potentially  
11 in his declaration could have talked about it, never did, no  
12 sponsor, no foundation. The same objection.

13 MS. BEVILACQUA: This is an admission as to what the  
14 people on the ground in France were doing when they were  
15 building up their business. It is included in their documents.

16 It is a business record, as we heard from Mr. Armenio  
17 several times, and the reason they don't want you to see it is  
18 because they want you to believe that nobody knew about this or  
19 the impact of their conventions or the import of the document.

20 MR. ARMENIO: Why that is completely wrong is that  
21 this was from purportedly Ms. Kolsky who was at Meda for all of  
22 about 15 days, if that. These were 3M's views from a 3M person  
23 who came to Meda transiently, provided perhaps her view of  
24 things and left.

25 We heard very clearly from Dr. Dierks she did not have

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Stenqvist - cross

1 CEPS responsibility at Meda. Very clearly that was wrong.

2 There is no foundation for this at all, certainly not with this  
3 witness who is nowhere indicated on this document.

4 THE COURT: I think we are in the same place which is  
5 you have raised points that would overcome hearsay objections,  
6 and you can ask the witness if he has got any foundation of  
7 knowledge that can explain where this thing comes from to me,  
8 which would be a basis for its admission and then you can make  
9 arguments. If he doesn't, then we are in the same place.

10 MR. ARMENIO: Your Honor, we already actually had that  
11 question, whether Mr. Stenqvist was aware of this happening in  
12 France, and he said no. The question your Honor has properly  
13 set forth has actually already been asked and answered by the  
14 witness with no, he is not aware of it.

15 THE COURT: He did say no to that. I don't know if  
16 you want to ask him anything about the particular document.

17 MS. BEVILACQUA: I will ask him a question.

18 BY MS. BEVILACQUA:

19 Q. Did Mr. Senac, who is the country manager in France at this  
20 time, did he report up to you as the CFO that there was a risk  
21 of zero to 15 percent for price decrease for Flecaine LP during  
22 this time period?

23 A. During the time?

24 Q. This time period being late January 2007?

25 A. No, he did not.

D1FJMED5

Stenqvist - cross

1 Q. So let's fast forward a little bit in time to the Fall of  
2 20007. At this point in time Mr. Traineau from CEPS informs  
3 Meda it can expect a price decrease on CR in France starting in  
4 fiscal Year 20008. Are you aware of that?

5 A. I'm aware that we budgeted a price reduction from July or  
6 August 2008. That was based on information, local information  
7 from the CEPS.

8 MS. BEVILACQUA: Can you pull up JX 116. This is  
9 already in, your Honor.

10 (Pause)

11 BY MS. BEVILACQUA:

12 Q. Can you see it, Mr. Stenqvist? I don't want to strain your  
13 eyes.

14 A. If I try very hard, yes, I can see it. I don't see my name  
15 on it, though.

16 Q. No, and that is not the question.

17 A. Okay. The question?

18 Q. The question here, first of all, Mr. Senac is reporting at  
19 this time to Mr. Vant Hullenaar. Is that correct?

20 A. Is it the 10th of March?

21 Q. No. It is actually --

22 A. The 3rd of October?

23 Q. Of October, yes.

24 A. I'm not exactly sure when Mr. Vant Hullenaar was appointed  
25 regional director.

D1FJMED5

Stenqvist - cross

1 Q. The E-mail, he is the to line, Mr. Vant Hullenaar is  
2 included in the CCs, yes?

3 A. Yes.

4 Q. This is summarizing topics that were mentioned at the  
5 meeting with Mr. Traineau on September 28th?

6 And for fiscal Year 2007, so that is the fiscal year  
7 you're in and you're getting towards the end of the last  
8 quarter now for Flecaine CR, the price will not be decreased  
9 with a favorable impact of 600, and I am not sure what that  
10 currency abbreviation is?

11 A. A thousand Euros.

12 Q. So this is in reference to the fact that the budgeted for  
13 10 percent decrease isn't going to happen for Flecaine CR and  
14 we can see even our people in France are mixing up our letters  
15 and what comes after the Flecaine.

16 Then for 2008, Mr. Senac informs he has signed and  
17 presented an extension of our agreement convention with the  
18 pricing committee for the next years, including all Meda and  
19 X30 product portfolio.

20 Were you aware Mr. Senac had entered into a convention  
21 on Meda's behalf in this time period?

22 A. No, I was not.

23 Q. Then he talks about further the Flecaine status being  
24 reviewed by Mr. Raineau, and Mr. Raineau advised him due to the  
25 new tariff price of Flecaine, Meda will be requested to reduce

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Stenqvist - cross

1 the price of Flecaine CR in the course of 2008. And then  
2 skipping a bit, he recommends to plan for a 15 percent  
3 reduction as of July 1st, 2008.

4 And that 15 percent reduction Mr. Senac recommends,  
5 that actually gets adopted into the Meda 2008 full-year budget,  
6 correct?

7 A. That's correct.

8 Q. When is the first time that you claim you personally  
9 learned about the CEPS pricing convention related to the  
10 controlled release form of Tambocor?

11 A. You mean the 50 percent reduction?

12 Q. Yes.

13 A. New Year's Eve 2007, one year after closing.

14 Q. I think it is referenced as Exhibit 10 to your testimony,  
15 PX 350.

16 A. (Pause)

17 Q. So as of New Year's Eve 2007, the way your normal budgeting  
18 process works, your 2008 budget is already set by this point?

19 A. Yes.

20 Q. But you do make adjustments or at least you monitor it  
21 continually and you make some adjustments on a quarterly basis,  
22 correct?

23 A. Yeah.

24 Q. When you learned on December 31st, 2007 that CEPS was  
25 claiming or at least the claim was being made for a 50 percent

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Stenqvist - cross

1 price reduction on the most important drug in the most  
2 important market, you did not change your forecast?

3 A. There was no planning going on at that time. We make that  
4 after every quarter. So there was no, no new planning going on  
5 around year end of 2007.

6 Q. You're saying it is a timing issue, if I understand what  
7 you're saying correctly?

8 A. In that situation, yes, at that time.

9 Q. So you didn't do it immediately on December 31st, but you  
10 didn't do it in the first quarter of 2008, either, did you?

11 A. After the first quarter in 2008, there was a new estimate  
12 for 2008. If I remember well, we made no adjustments for  
13 Tambocor CR because there was a dialogue going on between our  
14 local French company and the CEPS authority.

15 So it was we had some hopes that this convention could  
16 be renegotiated.

17 Q. Right. So during the first quarter of 2008, after you  
18 learned about the CEPS convention and what you say required a  
19 50 percent decrease, you did not adjust the budget for Tambocor  
20 CR in France because there were these ongoing dialogue between  
21 Meda and CEPS, so you didn't incorporate a 50 percent price  
22 decrease, nor did you incorporate a 40 percent price decrease?

23 It stayed whatever it was in the original budget,  
24 correct?

25 A. Yeah.

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Stenqvist - cross

1 MS. BROWN: Asked and answered, your Honor.

2 THE COURT: Go ahead. I will allow it.

3 THE WITNESS: No, because there were all indications  
4 from the CEPS that the application of this could be delayed and  
5 there were some dialogue going on. So we didn't have better  
6 information at that point.

7 BY MS. BEVILACQUA:

8 Q. I am sorry. We were talking over each other and I think I  
9 got confused at least.

10 My point being when you learned about it, you had this  
11 ongoing dialogue, you didn't change the forecast for Tambocor  
12 CR in France for 2008?

13 A. Not after the first quarter, no.

14 Q. You didn't change it for 2008 after the second quarter,  
15 either, did you?

16 A. I remember that we already had a 15 percent reduction  
17 included in the budget, so for every day that passed without  
18 entering into for these reductions, we would be better and  
19 better off compared to the budgeted 15 percent reduction.

20 Q. So once you found out about the convention, you didn't  
21 account for any additional risk above the risk of the price  
22 decrease that was already incorporated into your forecast?

23 MS. BROWN: Asked and answered.

24 THE COURT: Overruled. Go ahead.

25 THE WITNESS: No, we did not.



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Stenqvist - cross

1 MS. BEVILACQUA: I'd like to show you Plaintiff's  
2 Exhibit 364. This I believe is one of the ones attached to  
3 your witness statement as well. We do have an objection as to  
4 the hearsay within hearsay, but that is not what I am offering  
5 it for, your Honor.

6 THE COURT: Okay. Which exhibit?

7 MS. BEVILACQUA: 364.

8 THE COURT: I am sorry. Which tab number?

9 MS. BEVILACQUA: I think it is Tab No. 11.

10 (Pause)

11 BY MS. BEVILACQUA:

12 Q. This is a long E-mail chain. You are at the top of the  
13 first one, I believe. It is dated 4-3-2008 at the top, yes?

14 A. Yes.

15 Q. If you look at the second page, this is an E-mail from  
16 Mr. Maupas to Mr. Vant Hullenaar, Mr. Dierks, and at this time  
17 Maupas is the country manager in France, correct?

18 THE COURT: Ms. Bevilacqua, sorry. Before you proceed  
19 with the document, why don't we take a quick break and resume  
20 in 10 minutes.

21 MR. ARMENIO: Thank your Honor.

22 THE COURT: Thank you.

23 (Recess)

24 THE COURT: Whenever you're ready, Ms. Bevilacqua.

25 MS. BEVILACQUA: Thank you, your Honor.

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Stenqvist - cross

1 BY MS. BEVILACQUA:

2 Q. So I'm looking at the second page of PX 364 where we were  
3 before the break. Your here in the bottom that says Flecaine  
4 2008, and Maupas is stating a price decrease is, indeed, to be  
5 expected. However, we can now most probably say it will not  
6 happen before summer 2008. A letter will be sent.

7 As far as the percent of decrease is concerned, his  
8 ultimate goal is to sell the daily cost for CR at the cost of  
9 IR and, in fact, that is what was ultimately done in this case,  
10 wasn't it?

11 A. Yeah, that was also the reason why the best estimate was  
12 not to adjust the full year estimate for Tambocor.

13 Q. That is right because the price decrease that actually  
14 happens in November of 2008 takes effect I think November 1st,  
15 2008. Is that right?

16 A. Yeah, I believe that's right.

17 Q. It was a 13 percent price decrease for 2008?

18 A. That's correct.

19 Q. And obviously that is lower than what you had built into  
20 your forecast?

21 A. Yes.

22 Q. You built in 15 percent, right?

23 A. Yes.

24 Q. And then there was this phased system where the next year,  
25 a month before it was going to go off patent, there was another

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Stenqvist - cross

1 20 percent price decrease for Flecaine LP, right?

2 A. Yes.

3 Q. And that was in October of 2009, roughly?

4 A. Yes.

5 Q. Okay. Now, as I understand your claims in this case,  
6 they're predicated on the contention that 3M's projections for  
7 future revenues were misleading because 3M did not build in a  
8 50 percent price decrease or reflect a 50 percent price  
9 decrease for CR in France?

10 A. That's correct.

11 Q. And that's in Paragraph 69 of your testimony, right?

12 A. Yeah. That was what was in the agreement, was 50 percent.

13 Q. I understand that is your interpretation of what you think  
14 was in the agreement, but you acknowledge in Paragraph 68 of  
15 your testimony that you personally were aware of pricing  
16 pressures in France and Europe generally and that you were  
17 aware of the possibility of generic competition on Tambocor CR  
18 in France, correct?

19 A. Well, the general pricing pressure in Europe has never been  
20 of the magnitude of 50 percent, and when it comes to risk for  
21 generic pressure, we were not that concerned about that is my  
22 recollection for Tambocor CR.

23 Q. Although what you testified to in your written statement,  
24 in Paragraph 68, is that at the time of the acquisition you  
25 were generally aware there was pressure in most European

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Stenqvist - cross

1 countries to reduce the prices of pharmaceutical products, and  
2 you were also aware that the patent for Tambocor CR expired in  
3 November 2009. There could be a risk of some competition from  
4 generic competitors?

5 A. Yes, there could be some risk.

6 Q. And that you had no reason to believe that 3M's assessment  
7 of those risks was deficient?

8 A. No.

9 Q. And 3M, as we saw earlier, evaluated those risks as being  
10 10 percent and incorporated a 10 percent reduction for Flecaine  
11 pricing pressures for CR in France?

12 A. That was what they included in their financial model, yes,  
13 we found out afterwards.

14 Q. When Meda evaluated the risk of a price decrease in France  
15 as at least as late as September 2007, you evaluated that risk  
16 as building in a 15 percent decrease for fiscal Year 2008, and  
17 then --

18 A. But that was after-the-fact. That was after discussions  
19 between Meda in France and the CEPS.

20 Q. Correct.

21 A. New discussions.

22 Q. I am sorry?

23 A. New discussions.

24 Q. It is before you allege you learned 2.2, Article 2.2 of the  
25 conventions, right?

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Stenqvist - cross

1 A. Yes, yes.

2 Q. And in making that assessment in September 2007, you  
3 believe that that 15 percent was a reasonable estimate or  
4 reasonable evaluation of the risk?

5 A. Well, that is the result of the dialogue between our local  
6 company and the local authority, and it is hard to argue  
7 against it.

8 (Continued on next page)

DlfQmed6

Stenqvist - cross

1 BY MS. BEVILACQUA:

2 Q. I would like to turn now to DX-535.

3 This was admitted yesterday, your Honor. It's Meda's  
4 2007 annual report. It's a lengthy document. I will hand up a  
5 copy to your Honor and the witness.

6 THE COURT: Just in the flow of that last set, let me  
7 ask a question. You said that that's how you evaluated the  
8 risk after the discussions. How would you have evaluated the  
9 risk before the discussions?

10 THE WITNESS: Well, the 15 percent price reduction is  
11 a lot. So we did not -- had no reason to believe that there  
12 would be any price reduction of that magnitude before it.

13 THE COURT: Before discussions -- so I understand,  
14 before discussions with CEPS?

15 THE WITNESS: Yes.

16 THE COURT: You would not have thought that there was  
17 the risk of a 15 percent reduction?

18 THE WITNESS: No.

19 THE COURT: Between when you learned of a 10 percent  
20 risk of reduction, how would you have evaluated the risk prior  
21 to discussions?

22 THE WITNESS: Well, the 10 percent was never  
23 implemented.

24 THE COURT: If you can put yourself back in the  
25 moment, and even if you can't quantify it, how would you go

DlfQmed6

Stenqvist - cross

1 about evaluating the risk as you head into discussions with  
2 CEPS?

3 THE WITNESS: I did not conduct these discussions  
4 myself, so I think it's very difficult for me to answer what  
5 you bring into such a discussion.

6 BY MS. BEVILACQUA:

7 Q. Just to follow up on that last point, your Honor, is it  
8 fair to say then, Mr. Stenqvist, that you're relying on the  
9 local people who are having the discussions with the local  
10 regulators what to incorporate for that risk into your yearly  
11 budget?

12 A. In my case, yes, to a large extent.

13 Q. Now, as Meda's chief financial officer during this time  
14 frame, you had a role in compiling its 2007 annual report?

15 A. Yes, I had.

16 Q. And the annual report is truthful and accurate in what it  
17 communicates about the company's position and its financials to  
18 its investors and the public, correct?

19 A. Correct.

20 Q. If you would look at page 8 of the annual report. First  
21 two-thirds of the way down there's a heading that says,  
22 "changed market?

23 A. Yes.

24 Q. It might be easier to look at it in the hard copy unless we  
25 can get it blown up a bit more. It says, "Due to the high cost

DlfQmed6

Stenqvist - cross

1 of publicly financed medicine in Europe, influence over the  
2 choice of medications has shifted from prescribing doctor to  
3 various coordinating committees and purchasing organizations.  
4 Through its position as a buyer, publicly financed health care  
5 has gained an upper hand in its attempts to make medicine more  
6 cost effective. This turns the spotlight on direct product  
7 comparisons, in terms of medicinal properties and price, which  
8 changes the playing field for the pharmaceutical industry."

9 Did I read that accurately?

10 A. Yes.

11 Q. That was a risk that you were aware of in 2007 and in 2008  
12 when this report was published?

13 A. Yes.

14 Q. Would you take a look at page 114 in the same document.

15 A. 14 or one hundred --

16 Q. 114. This is a section of the annual report discussing  
17 risk factors, correct? And it identifies three, I'll call them  
18 subcategories of risk factors: Two of them dealing with price,  
19 first being competitors in pricing, and you're informing your  
20 shareholders that "pricing pressure has been and can be  
21 expected to remain significant within Meda's business areas, so  
22 there is a risk Meda will not be able to maintain current  
23 margins on its products."

24 Is that accurate?

25 A. That's true.



DlfQmed6

Stenqvist - cross

1 Q. The second section, "Actions by Authority" immediately  
2 underneath. "Like other companies in the pharmaceutical  
3 industry, Meda is subject to government authorities' actions.  
4 These actions could include changes in rules and regulations on  
5 pricing and discounting of drugs or changed conditions  
6 regarding the prescription of certain pharmaceutical. If  
7 Meda's products or activities are subject to further measures  
8 or restrictions by authorities, then these actions may have  
9 adverse commercial and financial effects on Meda."

10 Is that accurate?

11 A. That's accurate.

12 Q. And that's the environment you operated, correct?

13 A. Correct.

14 Q. These risk factors were nothing new in 2008, and, in fact,  
15 as far back as you can remember in the European pharmaceutical  
16 industry, these are not new risk factors?

17 A. No, but when you write about these risk factors and you  
18 read about them and think about them, I am absolutely not  
19 reading 50 percent price cuts. I'm reading something usually  
20 much less when we speak about price reduction.

21 Q. And the 15 percent price cut that you built into your 2008  
22 operating budget, that's something that you would consider as  
23 covered by this paragraph?

24 A. Probably.

25 Q. And these risk factors that we just walked through in your

DlfQmed6

Stenqvist - cross

1 annual report are true; with or without Article 2.2, they will  
2 persist?

3 A. The risk factors are true, of course, yes.

4 Q. When you were presented with the risk of what you claim  
5 Article 2.2 required, that 50 percent price decrease, you did  
6 nothing to separately account for that risk beyond what you had  
7 already built into that fiscal year 2008 budget?

8 A. As I explained, when we found out about it on New Year's  
9 Eve, 2007, there was no planning going on. After the first  
10 quarter, as we could see from what --

11 THE COURT: You said that earlier. What do you mean  
12 no planning you said?

13 THE WITNESS: Because the 2008 budget was already  
14 done, and we don't change budgets. What we do is that we make  
15 new estimates for the current year and that we do after every  
16 quarter. So the first time we would do that in 2008 would be  
17 after the first quarter; that is, towards the end of April we  
18 would start to do that.

19 THE COURT: So when you say "no planning," you mean  
20 budget planning?

21 THE WITNESS: Yeah.

22 THE COURT: Do you also mean making contemporaneous  
23 estimates? Or what exactly do you mean?

24 THE WITNESS: I mean that we update our financial plan  
25 for the year three times a year.

DlfQmed6

Stenqvist - cross

1 THE COURT: Right. OK.

2 THE WITNESS: And in between we don't do that really.

3 THE COURT: OK.

4 Q. You were involved in compiling and approving purchase price  
5 allocations for each country that you acquired within the 3M  
6 business, correct?

7 A. Correct.

8 Q. Prior to closing, you received some purchase price  
9 allocation worksheet estimates from 3M?

10 A. Yes, I did.

11 Q. OK. And then each country, as I understand it, has a  
12 separate closing agreement, and those purchase price  
13 allocations it reflected in those countries specific  
14 agreements, is that your understanding?

15 A. Yeah, because in order to carry out the acquisition  
16 agreement, it was necessary to have local agreements as well  
17 for each country where we would be transferring new business,  
18 because you can't just move people from one local entity to  
19 another without any agreement. So that was the practical  
20 reasoning behind those local agreements.

21 Q. If you would bring up Defendant's Exhibit 330.

22 MS. BEVILACQUA: And just so counsel is aware and the  
23 Court is aware, the full exhibit of Defendant's Exhibit 330 is  
24 hundreds and hundreds of pages because it has Excel  
25 spreadsheets attached to it. Eventually, I'll be moving for

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Stenqvist - cross

1 admission of the whole exhibit, but I'm only going to show him  
2 the contract part at the top.

3 THE COURT: All right.

4 MR. CARLINSKY: Your Honor, I'm going to object. I  
5 thought we covered this issue rather extensively in the final  
6 pretrial conference where the whole issue of the new injection  
7 of this argument was brought into the case for the very first  
8 time, and we discussed it from Meda's standpoint, we  
9 highlighted why this had been, as far as we were concerned,  
10 waived that it was unfair surprise.

11 Now, I realize it was in context of the motion in  
12 limine by the defendant, but I understood, and I certainly  
13 would have been prepared to make corresponding motion or make  
14 one now, but my understanding was given the issue having been  
15 raised when it was raised for the very, very, very first time,  
16 we have, again, no opportunity for anyone to ever address this  
17 issue, this issue would not be allowed to be brought into the  
18 case at this late hour. So I would raise that objection, and I  
19 would, if necessary, move now orally in limine to keep this out  
20 because I just don't think it has any place in this case.

21 THE COURT: Well, you can respond to the objection  
22 now. We did discuss it. As I said, I ruled on what was in  
23 front of me. You didn't -- you made the argument that it was  
24 waived. You didn't ask for the exclusion of evidence  
25 pertaining to it, so there was nothing for me to make that

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Stenqvist - cross

1 assessment, and I think at base, at least I understood the  
2 position to be, there was a document that hadn't been objected  
3 to in the pretrial order exchange from which they were going to  
4 make whatever arguments they could make, and I think that's  
5 where we are now.

6 MR. CARLINSKY: Well, if I can just respond on that.  
7 I think that's where I at least understood we were then. I  
8 didn't understand that they would be then questioning witnesses  
9 about this document. In fact, that was a particular point I  
10 raised at the end of our discussion. I said, I think it was  
11 Mr. Renard who mentioned, "Well, we intend to examine witnesses  
12 about this particular document," and I thought your Honor even  
13 put the question to Mr. Renard about that, but I didn't think  
14 it was necessary to make some kind of a blanket motion. The  
15 document is in. Where we concluded, I thought, at the end of  
16 the argument, was Mr. Renard's representation that 3M, should  
17 it choose to do so, would argue from the documents.

18 I thought it was very different from now questioning a  
19 witness about it. And so I would object to any questioning of  
20 the witness about the document. The document is in. If the  
21 legal arguments are to be made, it's in evidence. But I think  
22 it's very different now to put a question to a witness on a  
23 document that had never been raised or an issue that had never  
24 been raised in the case, so I object to any questioning of the  
25 witness regarding it.

DlfQmed6

Stenqvist - cross

1 MS. BEVILACQUA: Your Honor, as I recall that final  
2 pretrial conference, your Honor also noted the impact it would  
3 have or could have on 3M's argument with respect to damages. I  
4 have the CFO here, and he did testify about two amendments to  
5 this contract in his deposition.

6 THE COURT: What's the scope of the questioning you  
7 have on this document?

8 MS. BEVILACQUA: The scope of the questioning is to go  
9 through the purchase price allocation, how they did it and how  
10 it ties back to the annual report of Meda.

11 THE COURT: And you questioned Mr. Stenqvist about  
12 this document at his deposition?

13 MS. BEVILACQUA: I questioned him about the two  
14 attachments, the two amendments to it, amendment number one and  
15 number two, and I, unfortunately, didn't have the primary one  
16 in front of him, but I did question him about amendment number  
17 one and number two, which are DX-393 and DX-421.

18 THE COURT: And is that what you're going to ask him  
19 about now?

20 MS. BEVILACQUA: Yes.

21 MR. CARLINSKY: The two you asked him about in his  
22 deposition?

23 MS. BEVILACQUA: And the first one that they relate  
24 to; and as I understand it, your Honor, they made no objection  
25 to the document itself or excluding the document.

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Stenqvist - cross

1 THE COURT: I'm sorry, how many questions do you have  
2 on this? Other than what you asked him about in his  
3 deposition.

4 MS. BEVILACQUA: I have seven questions on this  
5 document.

6 MR. CARLINSKY: What pages in his deposition is the  
7 question, please?

8 MS. BEVILACQUA: I believe it starts at page 183.

9 THE COURT: Mr. Renard said at the final pretrial --  
10 let me back up a little bit to give it context.

11 "French agreement, your Honor, we say it's payable by  
12 Meda France, the 132 million which was paid for by the -- paid  
13 for the French tangible and intangible assets. That question,  
14 in other words, is answered by this contract to which no  
15 objection has been asserted."

16 And then I said, "So, it's just a contract  
17 interpretation?"

18 "Yes, your Honor. In fact, I would say evidence  
19 beyond the contract would presumably be inadmissible because I  
20 believe the contract is clear in this regard. It says that the  
21 purchase price is payable by Meda France."

22 And I said, "So you're just going to make these  
23 arguments to me in summation? I thought I understood you to  
24 say you were going to question their expert about it."

25 And he did say, "I believe, too, because those

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Stenqvist - cross

1 questions don't exceed the scope of the direct testimony, then  
2 to ask if they considered certain matters and were aware of  
3 certain matters, I don't believe that exceeds the scope."

4 Then we changed direction a little bit. I don't  
5 think -- I don't think it was resolved at the final pretrial,  
6 and, as I indicated, I was ruling on what was in front of me,  
7 and you hadn't put it in front of me.

8 MR. CARLINSKY: Well, I think though even what your  
9 Honor just read, with all respect, all that we heard at best  
10 from Mr. Renard is he might question one of our experts about  
11 it. There was no indication, and I'm trying to pull up the  
12 transcript because my recollection is the way it was resolved  
13 is there would be no witnesses questioned. Certainly, no fact  
14 witnesses. And this comes back -- I don't want to repeat the  
15 argument I previously made, but we have no opportunity given  
16 that this issue and the way in which it's been framed to have  
17 prepared for this.

18 And I would just observe, I mean, I think it's telling  
19 that even in the deposition designations from 3M, none of the  
20 testimony that Ms. Bevilacqua now says she's referring to in  
21 the witness' deposition was even designated, I think  
22 illustrated that this was really an eleventh hour, 59 minute --

23 THE COURT: I think there's no doubt about that,  
24 Mr. Renard admitted that.

25 MR. CARLINSKY: Yes, and that's the unfairness of it.



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Stenqvist - cross

1 The unfairness is it's not addressed in Mr. Stenqvist's  
2 declaration. So we had a previous agreement, I thought, that  
3 we were going to have at best a question put to the expert, but  
4 certainly not any discussion when we had the conference that  
5 the questions would be put to a witness. And I just think it  
6 comes back to the unfairness of it.

7 I'd make the motion now, which I am making, which is I  
8 object to any questioning of this witness regarding this  
9 particular document given that it was not something that had  
10 ever been raised in the case.

11 MS. BEVILACQUA: Your Honor, as I believe you are  
12 correct, it was not resolved at the final pretrial hearing.

13 THE COURT: We are here now.

14 MS. BEVILACQUA: What I am -- really all I want to do  
15 with Mr. Stenqvist is put the document in. If the document is  
16 already in evidence, your Honor, we can argue about it then. I  
17 have questions about how they accounted for the transaction  
18 related to the annual report, and your Honor even raised that  
19 issue at the final pretrial, you had asked a few questions and  
20 you said we don't know, and I would just like to confirm it  
21 with him based on the face of the document, their own contract  
22 and the annual report.

23 THE COURT: All right. Proceed now and -- I think the  
24 issue is still in front of me as to whether it's -- meaning to  
25 consider evidence based on the acquisition, the ancillary

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1 agreement is unfairly prejudicial at this stage and were waived  
2 by the defendants, but let me see with specificity what the  
3 scope of the questioning is, and then you can argue based on  
4 that. OK?

5 MS. BEVILACQUA: Thank you.

6 THE COURT: And I don't think you have addressed the  
7 question of since Mr. Renard admitted that this was late  
8 discovery, strategic decision on the eve of trial preparations,  
9 the prejudice question.

10 MS. BEVILACQUA: Well, your Honor, we did -- actually,  
11 we did address that in our briefing as well, and I know  
12 Mr. Renard addressed it at the time. This is a contract that  
13 Meda entered into, and it has been signed, and it is Meda's  
14 obligation to sue on the correct contract in the case. It's an  
15 operative fact the contract exists, and they can't get around  
16 the fact that the contract exists. It's been signed, and  
17 there's no objection to the authenticity of the document or how  
18 the transfer actually took place.

19 THE COURT: I thought your point was that Meda didn't  
20 admit to it.

21 MS. BEVILACQUA: I'm sorry, shorthand gets the better  
22 of me; that Meda France entered into this contract that we are  
23 talking about at DX-330 and that 3M Santé was the other party  
24 to it.

25 MR. CARLINSKY: May I just for the record have at

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1 least -- may I just respond? It goes back to if that's the  
2 case, where was it in the affirmative defenses among the 18?  
3 If the argument now, which was raised for the first time in  
4 late December, is that, oh, we have the wrong plaintiff, or  
5 this is the operative agreement, where was it raised in the  
6 span of four years?

7 THE COURT: Yes, I understand.

8 MR. CARLINSKY: And it is waived. That was not an  
9 answer to the Court's question of prejudice. There are  
10 explanations to documents that parties would have addressed had  
11 defendant acted properly here and raised this. And I know the  
12 Court has looked at it because your Honor referenced the extent  
13 to which their own affirmative defenses go into detail, and on  
14 all sorts of defenses. Not a word, not a whisper about this  
15 particular document. Now we have a witness. Now we're hearing  
16 that this is one of the -- the list of new arguments, of  
17 course, continues to grow. This one started in December,  
18 but --

19 THE COURT: I got it, Mr. Carlinsky.

20 MR. CARLINSKY: I'm sorry, I'm a little exercised. I  
21 apologize to the Court for that, but I understand the ruling  
22 and I'll sit down.

23 THE COURT: I haven't made a ruling. I'm going to  
24 allow the questioning. I have not decided whether I think the  
25 argument was waived. It would be a relatively easy -- well,

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1 let's just take it as it comes. We'll see with specificity  
2 what we're dealing with because sometimes people get exercised,  
3 and turns out it's no thing, but we'll see.

4 MR. CARLINSKY: My son tells me that all the time.

5 THE COURT: Go ahead.

6 MS. BEVILACQUA: Thank you.

7 BY MS. BEVILACQUA:

8 Q. Returning back to exhibit 330, this is the business  
9 acquisition agreement between 3M Santé and Meda Pharma SAS,  
10 which as I understand it, is Meda France, is that correct?

11 A. Yes, it is.

12 Q. It lists a purchase price in paragraph 1.1 of \$132 million  
13 as the purchase price for 3M Santé?

14 A. Yes, it does, but this is a -- is not the same as the  
15 acquisition value. This is the allocation for tax purposes  
16 that you need to have an agreement like this.

17 Q. I understand, but you had also mentioned before our  
18 extended discussion that you can't just transfer things. You  
19 have to actually have an agreement in place to get employees to  
20 get the assets and to get everything transferred?

21 A. Yes, that's true.

22 Q. OK. And I understand it's for tax purposes, and, in fact,  
23 it's at least one of the purposes for the document page 8 --  
24 well 7.12, "The buyer and the seller assert under the penalties  
25 set forth in article 1837 of the French tax code that this

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Stenqvist - cross

1 agreement provides the whole price agreed for the local  
2 business transfer."

3 Is that accurate?

4 A. Yes, that's true, but I would like to point out that the  
5 assets included in this agreement is only a subset of all the  
6 assets because this agreement doesn't include the product  
7 rights of the products, the trade names, the patents, the whole  
8 know-how around the products, including Tambocor CR. So it is  
9 parts of the assets which are included here.

10 Q. And part of the assets included -- I'm looking at what is  
11 page 36 in the excerpt -- are lists of marketing authorizations  
12 to be transferred by buyer -- to the buyer?

13 A. Yeah. The marketing authorizations, they have to be  
14 included in local agreements because it's really the local  
15 companies who deal with the local regulatory authorities. So  
16 that is included here for practical purposes.

17 Q. You had mentioned product rights, and the product rights  
18 not being included. And I want to come back to that in just a  
19 second, but before I do, I would like to show you two  
20 documents, DX-393 and 421.

21 THE COURT: Are we done with 330? Are we coming back  
22 to it?

23 MS. BEVILACQUA: I think we're done for now.

24 Q. Do you recognize these documents? We'll take them one at a  
25 time. DX-393?

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Stenqvist - cross

1 A. Yeah. Well, vaguely. I know that there were amendments to  
2 these agreements as to values because the final values were not  
3 really established until even after closing.

4 Q. In fact, these documents, DX-393 is dated December 31,  
5 2007, so that is after closing, as you've noted.

6 A. Yeah.

7 Q. And DX-421 is September 20, 2008.

8 A. Yeah.

9 Q. And we looked at these in your deposition, is that correct?

10 A. Yes, I believe we did.

11 Q. And we discussed product rights allocation of it. I just  
12 want to make sure I understand how the subsidiary -- the  
13 transfer of a local subsidiary worked financially for Meda and  
14 its group companies. So what I'd like to look at next is 535,  
15 back to your annual report which you have here in front of you.  
16 As I understand it, the way the money flowed was that Meda AB  
17 paid the purchase price stated in the French agreement and  
18 addendum of \$132 million, and then it took -- on behalf of its  
19 French subsidiary, and then it took a receivable on its balance  
20 sheet. Is that generally correct?

21 A. Yes, we finance all our subsidiaries through debt, but only  
22 as much debt as we can.

23 Q. And we can see that if we look at page 92 of the annual  
24 report, the balance sheet of the parent company -- this is the  
25 balance sheet of the parent company, as it says at the top, and

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Stenqvist - cross

1 it shows the receivable for your companies for year 2006 of  
2 63 million SEK. And for 2007, it's 3,043,000,000 SEK, as I  
3 understand the conversion, which is a difference of about  
4 2.98 billion SEK of the Swedish krona?

5 A. Yes.

6 Q. Then the conversion you apply at this time was 6.6 as  
7 stated on page 81 of your annual report. And if you apply that  
8 conversion rate to this balance sheet, you get about  
9 \$451 million that the parent company accounted for as a  
10 receivable on its balance sheet?

11 A. Yes. Yes.

12 Q. OK. What form did that receivable take? Was it a note  
13 securitized debt?

14 MR. CARLINSKY: I want to make an objection. It  
15 actually says receivables plural.

16 MS. BEVILACQUA: I'm sorry.

17 A. What's reflected here is our intercompany financing. We  
18 extend loans -- from a group, when I say we, I mean the group.  
19 The group extends loans to the subsidiaries. This particular  
20 year, the local 3M acquisitions were an important part of those  
21 loans because obviously France didn't have any resources to  
22 purchase anything.

23 Q. And you mentioned product rights. If we look at page 57 of  
24 the annual report, second column you're referencing intangible  
25 assets of good will and product rights. And it's Meda's

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Stenqvist - cross

1 standard practice to test annually for impairment to good will  
2 and to its product rights, is that accurate?

3 A. Could you repeat that, please?

4 Q. Sure. Maybe it will help if we just look at the  
5 highlighted portion there. So, "Good will represents the  
6 excess of the costs of an acquisition over the fair value of  
7 the group share over the net identifiable assets of the  
8 acquired subsidiary on the date of acquisition. Good will on  
9 acquisitions of subsidiaries is recognized in intangible  
10 assets. Good will is tested annually for impairment and  
11 carried at cost less accumulated impairment losses."

12 And for product rights, it's similar. "The product  
13 rights are carried at cost. They have a limited useful life and  
14 are carried at a cost less accumulated impairment losses."

15 Then the last sentence of that paragraph. "Value of  
16 product rights is tested annually to identify whether  
17 impairment exists."

18 So that's something you do as a company, you test  
19 whether --

20 A. Yes, we do.

21 Q. -- it's impaired.

22 Page 75 of your annual report, you have a note in your  
23 financials specifically related to the acquisition of the 3M  
24 Pharma. And you told your investors that the fair market value  
25 of the 3M assets acquired was 5.679 billion Swedish krona,



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Stenqvist - cross

1 which if you applied the rate of exchange is roughly the  
2 purchase price. I think it's a million or two off of  
3 854 million?

4 A. Yes.

5 Q. And that was accurate and truthful at the time you made  
6 that statement?

7 A. Yes.

8 Q. And you break it down between product rights and good will,  
9 correct?

10 A. That's true, correct.

11 Q. And you look --

12 A. And other assets, to be correct.

13 Q. To be complete, yes.

14 And if look at the numbers, roughly 75 percent of the  
15 acquisition value you attributed to product rights and  
16 25 percent to good will?

17 A. Roughly, yes.

18 Q. You made the same allocation on a percentage basis in the  
19 country specific agreement, roughly 75 percent to product  
20 rights and 25 percent to good will?

21 A. No. No, I don't agree with that. That's not what we did.  
22 Because in the local agreement what we are really paying for is  
23 the good will and the going concern value.

24 Q. Nonetheless, you're claiming the damages in this case in  
25 excess of \$200 million, and you have not to date taken an

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Stenqvist - cross

1 impairment of good will or product rights as it relates to your  
2 claim of being paid for the CEPS convention?

3 A. No, because the values in the balance sheets are based on  
4 acquisition values, and we have not found any reason to impair  
5 those values because of performance of the closing.

6 MS. BEVILACQUA: Your Honor, where before I forget,  
7 and I know it's going to be objected to, I move for the  
8 admission of 330, 393 and 421.

9 THE COURT: All right. Let me hear from plaintiffs.

10 MR. CARLINSKY: I'm going to say objection for the  
11 reasons --

12 THE COURT: To all of them?

13 MR. CARLINSKY: I think so, your Honor. Because I  
14 think they all go together, and so I object to all three of  
15 them on the same grounds that we've discussed today and  
16 previously.

17 THE COURT: Two of them were asked about of  
18 Mr. Stenqvist during his declaration, right -- during his  
19 deposition?

20 MR. CARLINSKY: They were, but they were done -- I  
21 think there were a few questions that were asked, but I think  
22 these -- the two amendments go with the original agreement.  
23 The purpose for which they're now being proffered is a whole  
24 new issue that's been raised for the first time far too late.  
25 So on that basis, I object to all three. But particularly

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Stenqvist - cross

1 object to 330 more strenuously than the other two.

2 THE COURT: All right. I am going to reserve on that  
3 question. I will note I had read one portion of the final  
4 pretrial as to what Mr. Renard had represented. That was  
5 specifically in my response to experts he had earlier said  
6 we're going to ask the damage experts about it. We're going to  
7 ask their executives who were involved in negotiating this  
8 thing about it.

9 So I think you reacted to the portion that I read and  
10 said whatever you're going to let in, it shouldn't be broader  
11 than what was indicated at the final pretrial conference, and  
12 you objected to that, and I just wanted to be clear that it had  
13 been broader at the final pretrial, and I take the objection  
14 point, obviously, seriously.

15 MR. CARLINSKY: And I would just note, and I'll look  
16 at this over the evening, there was toward the end of the  
17 colloquy with Mr. Renard, it's a statement on page 66 at line  
18 16, where he said after all of the colloquy, obviously, and the  
19 objections were being discussed: "Yes, your Honor. In fact, I  
20 would say evidence beyond the contract would probably be  
21 inadmissible because I believe the contract is clear in that  
22 regard. It says that the purchase price is payable by Meda  
23 France." And then ...

24 THE COURT: Right, that was with my question as to  
25 interpretation of the contract.

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Stenqvist - cross

1 MR. CARLINSKY: Yes.

2 THE COURT: I understand the objection. I think they  
3 are very serious questions raised with the waiver intention.  
4 We've now seen the scope of the questions that are being asked  
5 and the documents being objected to. So I'm going to reserve,  
6 and I may take submissions on that. I do just want to make  
7 sure it's clear where we left it, where I understood we left it  
8 at the final pretrial as I've indicated. OK.

9 MR. CARLINSKY: Thank you.

10 BY MS. BEVILACQUA:

11 Q. It's Meda's claim in this case that the CEPS agreement  
12 negatively affected Meda's revenues and EBITDA, correct?

13 MR. ARMENIO: Objection.

14 A. Correct.

15 MR. ARMENIO: Objection.

16 THE COURT: Hang on.

17 MR. ARMENIO: Objection. Now we're getting to your  
18 Honor's ruling on Allegheny. The claim is a very clear claim  
19 for acquisition price overpayment. Your Honor has already  
20 ruled for damages. We're not talking about post acquisition  
21 revenues and impairments and the like. So that question is  
22 objectionable because it goes against your Honor's ruling, very  
23 clear rulings that we're not going to be looking at post  
24 closing events at all with respect to damages.

25 MS. BEVILACQUA: I don't think I've asked a question

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1 yet other than --

2 THE COURT: The question was: "It's Meda's claim in  
3 this case that the CEPS agreement negatively affected Meda's  
4 revenues and EBITDA, correct?"

5 MR. ARMENIO: And that's basically saying isn't it  
6 Meda's claim that you're relying on post closing? And it's not  
7 right. We're saying the acquisition price is wrong. So  
8 there's no basis to ask that of this witness. And I think,  
9 quite frankly, it's a question to try to draw in and begin a  
10 discussion of post closing events which would be entirely  
11 improper.

12 MS. BEVILACQUA: Your Honor, I was quoting from the  
13 witness' direct testimony in written form, paragraph 82, first  
14 sentence:" "The CEPS agreement which 3M failed to disclose to  
15 Meda prior to the acquisition negatively affected Meda's  
16 revenues and EBITDA."

17 MR. ARMENIO: And your Honor's ruled that that kind of  
18 post closing evidence isn't coming in on damages. So we, of  
19 course, understood your Honor wouldn't be looking at that  
20 statement, wherever made from anyone, for damages purposes.

21 THE COURT: All right. You can ask the question.  
22 It's clear in my mind what will be permissibly considered for  
23 damages. I don't know what the answer is, but I think  
24 Ms. Bevilacqua has by pointing to the quote from the witness'  
25 own testimony, which you put in, certainly allows the question

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Stenqvist - cross

1 to be asked. Go ahead.

2 BY MS. BEVILACQUA:

3 Q. You acknowledged earlier in your written testimony at  
4 paragraph 68, and we saw this one before, the generalized risk  
5 of a price decrease for Tambocor CR, and the risk posed by  
6 patent expiration.

7 Now, Meda had 34 months between the time of closing  
8 and the time of the expiration of the patent, is that correct?  
9 According to the math, the closing was January 2, 2007 and the  
10 patent expired at the end of October 2009?

11 A. Sounds like more than two and a half years, less than  
12 three.

13 Q. And what Meda experienced from CEPS was no reduction in  
14 price for 22 of those 34 months?

15 A. Well, the first price reduction was in the first of  
16 November of 2008.

17 Q. Right, and that was at 13 percent, not 50 percent?

18 A. That's correct.

19 Q. And then you had a period of another eleven months until  
20 one month before the patent expired where the price was  
21 decreased by 20 percent? I'm sorry, I need a verbal response.

22 A. Yes.

23 Q. Then when the patent expired, Meda is still having the  
24 price of Tambocor's CR at that same level it was before the  
25 patent expiration?

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Stenqvist - cross

1 A. Yes. But we never made any adjustments to any plans to  
2 account for patent expiring.

3 Q. And you've never written off or otherwise impaired the  
4 Tambocor CR asset in France?

5 A. Could you please repeat?

6 Q. Yes. You've never otherwise written down, taken a loss, or  
7 shown an impairment for the Tambocor CR France assets?

8 MR. ARMENIO: Just the same objection, your Honor,  
9 just to state it for the record.

10 THE COURT: I'll consider that objection standing, and  
11 my ruling as to what I will and will not consider post  
12 acquisition evidence to be permissibly considered. So consider  
13 it preserved.

14 MR. ARMENIO: Thank you, your Honor.

15 A. So, your question is whether we took in any impairment on  
16 Tambocor post closing?

17 Q. Right.

18 A. No, we have not done that.

19 Q. And you didn't change your forecasts or inform your  
20 investors of this harm that you have allegedly suffered since  
21 the beginning of the signing of the acquisition agreement?

22 A. I think those are two different things. Forecasts and  
23 information to investors. I think we discussed forecasts, and  
24 as soon as we had signed this agreement with 13 percent plus  
25 20 percent reductions, that was immediately put into our plans.

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Stenqvist - cross

1 What was your question about investors?

2 Q. I've forgotten it. So it's OK.

3 A. OK.

4 THE COURT: It's knowable, if you want to know it.

5 MS. BEVILACQUA: I may know it, it's OK.

6 Q. And you're claiming in excess of \$200 million, which is a  
7 quarter of the purchase price?

8 A. Correct.

9 Q. You're claiming a quarter of the purchase price adjustment  
10 for, in essence, for the product rights Tambocor to which you  
11 have never taken an impairment or going off patent in 34 months  
12 and represented less than 13 percent of the revenue of the  
13 entire business?

14 MR. ARMENIO: Objection. Lack of clarity as to which  
15 business they're talking about. It's mixing completely the  
16 graphic that was shown --

17 THE COURT: Sustained.

18 A. It represents --

19 THE COURT: I'm sorry. If I sustain, you don't have  
20 to answer.

21 THE WITNESS: OK.

22 MS. BEVILACQUA: Nothing further, your Honor, subject  
23 to redirect.

24 THE COURT: Ms. Brown.



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Stenqvist - cross

1 REDIRECT EXAMINATION

2 BY MS. BROWN:

3 Q. Mr. Stenqvist, do you still have a copy in front of you of  
4 DX-290 PowerPoint presentation titled Acquisition of 3M  
5 Pharmaceuticals Europe?

6 A. Yes.

7 Q. I believe you were asked a few questions about this  
8 document in your cross. Do you remember that?

9 A. Yes, I remember.

10 Q. And do you remember discussing with Ms. Bevilacqua how this  
11 PowerPoint contained information that you were giving your  
12 lenders?

13 A. Yes.

14 Q. Could you please turn to the page that ends in the Bates  
15 number 1391?

16 A. Yes.

17 Q. Do you see how this slide says "The Meda Way - One Step  
18 Ahead," and then there are bullet points underneath that. The  
19 first bullet point, growth by acquiring cash cows; and the next  
20 bullet point, building strong profitability gives long-term  
21 possibilities. What is it that you were communicating to your  
22 lenders in this portion of your PowerPoint?

23 A. That the 3M acquisition was completely in line with the  
24 Meda way or growth by cash cows, and that the cash generated  
25 from each new acquisition and from the business as a whole

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Stenqvist - redirect

1 would give to other possibilities going into the future. That  
2 3M was completely -- the 3M acquisition and 3M business was  
3 completely in line with that, we thought.

4 Q. Why did you think the 3M acquisition was consistent with  
5 acquiring a cash cow?

6 A. Because it consisted of very stable products, very strong  
7 products with estimated strong long-term cash flows.

8 Q. What were you communicating to your lenders in the second  
9 bullet point?

10 A. That we would maintain a very strong profitability from  
11 this business, and, of course, that's what you want to tell  
12 lenders so that you can borrow money from them. They're very  
13 interested in strong cash flows.

14 Q. When you prepared this document for your lenders on  
15 November 2006 -- that's the date on the front page of the  
16 document -- did any of the points in this PowerPoint reflect  
17 any of the terms contained in the CEPS convention or Article  
18 2.2 that's the subject of this litigation?

19 A. No, we didn't know about any CEPS conventions of that kind  
20 on November 22.

21 Q. Now, do you remember you were asked some questions about  
22 Meda's annual report. I don't know if I have a copy of it, but  
23 the 2007 annual report. Do the financials of all of Meda's  
24 subsidiaries, including the French subsidiaries, do they roll  
25 up into the parent company Meda AB?

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Stenqvist - redirect

1 A. Ultimately, yes.

2 Q. Now, does the future EBITDA that you expect to earn from  
3 any product when you're doing a valuation have anything to do  
4 at all with how you calculate impairment of an asset for  
5 financial statement reporting purposes?

6 A. Please repeat the question.

7 Q. Does the future EBITDA that you expect to earn from a  
8 product that you look at when you're doing a valuation, did  
9 that have anything to do with how you calculate impairment of  
10 an asset for your financial statement reporting purposes?

11 A. Yes, it has something to do with that. It's cash flows,  
12 but that includes the EBITDA.

13 Q. Can you explain that, please?

14 A. That the impairment of assets is an estimate of all future  
15 cash flows, and, of course, the future cash flow of an asset  
16 includes the EBITDA, the future EBITDA.

17 Q. Now, when we go back and look at the -- I believe there was  
18 some testimony about the pledges. I want to walk through that  
19 time line a little bit. On December 31, 2007 you testified in  
20 your cross that you expected there was a risk of a 10 percent  
21 price decrease. Do you remember that?

22 A. Yes.

23 Q. I just want to kind of walk through what you said before to  
24 give us a frame of reference?

25 A. Yep.

DlfQmed6

Stenqvist - redirect

1 Q. And then do you remember looking at documents in  
2 August 2008 referencing a 15 percent price decrease  
3 incorporated into the pledges for Tambocor CR?

4 A. Is your question whether I saw the document or if I  
5 remember the 15 percent reduction incorporated into the budget?

6 Q. That's a good clarification. Let's just stick with what  
7 you know yourself; not what was in the document.

8 A. Yes, we included a 15 percent price reduction in the 2008  
9 budget.

10 Q. By September 2008 there was a new agreement with CEPS that  
11 had these other price reductions we've talked about, the  
12 13 percent in 2008 and then the 20 percent in October of 2009,  
13 correct?

14 A. Correct.

15 Q. So let's go back so we have a time line a little bit. In  
16 December of 2007 when you learned of the risk of a 10 percent  
17 price decrease, how was that reflected in Meda's budget for  
18 2008?

19 A. Sorry, but when we learned about the 10 percent, that was  
20 in 2006 --

21 Q. You're absolutely right. I misstated that question. In  
22 December of -- on New Year's Eve --

23 A. Yeah.

24 Q. -- when you learned of the CEPS convention at the  
25 50 percent price decrease set out in that convention, at that

DlfQmed6

Stenqvist - redirect

1 point in time, what type of price reduction did you have in  
2 your budget?

3 A. We had a 15 percent price reduction because, as I said,  
4 there had been some guidance from the CEPS to our local country  
5 manager during the fall of 2007.

6 Q. Now, your first quarter estimate is done at the end of  
7 April 2008?

8 A. Yes, correct.

9 Q. And why was there no change to Meda's full year estimate at  
10 the end of April 2008?

11 A. Because there were indications from the CEPS that the  
12 application of the price reductions were going to be faced, and  
13 that only a part of it would come in 2008, and then the rest in  
14 2009. And it was according to the estimates of our local  
15 company we could hopefully remain within budget for 2008, but  
16 there was -- at that point in time there was sufficient  
17 information to actually change that original estimate.

18 Q. So, if you would please turn to Exhibit 11 in the binder  
19 with your declaration. That is a document that you were shown  
20 during your cross. It is PX-364. If you look at the email  
21 starting on page 2, this is an email I believe you looked at  
22 with Ms. Bevilacqua, and it's dated April 2, 2008. Before she  
23 directed you to the paragraph that said "Flecaine 2008," the  
24 first paragraph. But if you look at the second paragraph  
25 underneath that, you see where it says, "Altogether for

DlfQmed6

Stenqvist - redirect

1 Flecaine 2008 price decrease, we should be more or less in line  
2 with what was assumed in 2008 plan, and we are now in a better  
3 position to forecast accordingly."

4 Now, this was in April 2008. When exactly were you  
5 working on your first quarter estimate in 2008?

6 A. A few weeks later than this email. So when we have the  
7 first quarter result, we also decide explain -- we also make a  
8 new estimate for the full year. And this all indicates that  
9 there was a possibility that we could end up in line with what  
10 we have in the original budgets.

11 Q. Now, we have just one more quarter before a new convention  
12 is actually signed, and that's the second quarter of 2008.  
13 When were you doing your new full year estimate for the second  
14 quarter of 2008?

15 A. Late July.

16 Q. So if you would please turn to Tab 13 in your binder.  
17 There is a PowerPoint here from July 7, 2008. Was this a  
18 PowerPoint meeting that you attended?

19 A. Yes.

20 Q. If you would look at page 6 of that PowerPoint, do you  
21 recall being informed on July 7, 2008, that there had been a  
22 meeting on July 3 with your local French country manager,  
23 Mr. Renaudin and CEPS?

24 A. Yes.

25 Q. And do you see in the middle of that page where it says,

DlfQmed6

Stenqvist - redirect

1 "Two-steps phasing has been requested on our side and already  
2 accepted." And then it says the dates obtained October 1st.  
3 And this was approximately how many weeks, would you say,  
4 before you were doing the second quarter full year estimate for  
5 2008?

6 A. Again, a few weeks before we make our estimates.

7 Q. When you did make your estimate for the second quarter of  
8 2008, what at that point in time did you decide to include in  
9 the 2008 plan as far as Tambocor CR?

10 A. Well, there was no need to make any major price adjustments  
11 because that was already included in the budget.

12 MS. BROWN: I have no further questions, your Honor.

13 THE COURT: All set, Ms. Bevilacqua?

14 MS. BEVILACQUA: Nothing further.

15 THE COURT: Thank you Mr. Stenqvist. You can step  
16 down.

17 (Witness excused)

18 MR. ARMENIO: Plaintiff, your Honor calls as its next  
19 witness, non-party witness Mr. Jason Haas, formerly with  
20 Goldman Sachs.

21 THE COURT: Let's take a five minute break, and you  
22 can have him come on in and come on up.

23 MR. ARMENIO: Thank you, your Honor.

24 THE COURT: We will finish out the day. I'm going to  
25 assume we're going to go -- we're a little bit behind, so we

DlfQmed6

Stenqvist - redirect

1 will go a little bit late, somewhere in the 5:15 to 5:30 range.

2 We'll see where things end up. OK?

3 MR. ARMENIO: Yes, your Honor.

4 MR. CARLINSKY: Thank you, your Honor.

5 (Recess)

6 (In open court)

7 THE COURT: Mr. Haas, please rise.

8 JASON HAAS,

9 called as a witness by the Plaintiff,

10 having been duly sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY MR. ARMENIO:

13 THE DEPUTY CLERK: Please state and spell your full  
14 name.

15 THE WITNESS: Jason Haas, J-A-S-O-N; H-A-A-S.

16 THE COURT: Thank you, Mr. Haas.

17 Go ahead.

18 MR. CARLINSKY: Thank you, your Honor.

19 Q. Mr. Haas, you're appearing today pursuant to subpoena, is  
20 that correct?

21 A. Yes.

22 Q. And in preparing for your deposition testimony today, other  
23 than meeting with your own personal counsel, have you had  
24 occasion to meet with any of the lawyers representing 3M?

25 A. Yes, about I guess a couple weeks ago I met with this



DlfQmed6

Haas - direct

1 gentleman over here.

2 Q. Mr. Widell?

3 A. Yes.

4 Q. Did you meet with him once or more than once?

5 A. Once.

6 Q. Have you spoken to any of the 3M lawyers in addition to the  
7 meeting in connection with your testimony today?

8 A. No.

9 Q. Would it be correct you haven't met with anybody from the  
10 Meda team to discuss your testimony today?

11 A. Well, I met with you for a deposition awhile back.

12 Q. But other than your deposition, we haven't had any  
13 conversations in preparing for testimony today?

14 A. No.

15 Q. Now, talking about your deposition, have you had a chance  
16 before coming to court today to re-read your deposition?

17 A. No.

18 Q. When you testified at your deposition, did you do so  
19 truthfully?

20 A. Yes.

21 Q. Do you have any reason to believe today that anything you  
22 said in your deposition was false or inaccurate or would be  
23 subject to change?

24 A. No.

25 Q. Now, I understand that since we last met, you had a change

DlfQmed6

Haas - direct

1 of employment, is that correct?

2 A. Correct.

3 Q. Where do you work now?

4 A. At Deutsche Bank.

5 Q. At the time of your deposition, where did you work?

6 A. Goldman Sachs.

7 Q. When did you begin at Deutsche Bank?

8 A. My first official day was October 30th.

9 Q. How many years were you at Goldman Sachs?

10 A. 17.

11 Q. What was your position -- let's start at Goldman Sachs.

12 what was your position?

13 A. I was managing director in the health care investment  
14 banking group.

15 Q. You are an investment banker, sir?

16 A. Correct.

17 Q. That's the same position you have at Deutsche Bank?

18 A. Correct.

19 Q. And you said in the health care group. Does that mean as  
20 an investment banker that you're involved in advising clients  
21 in connection with health care business mergers and  
22 acquisitions?

23 A. Yes.

24 Q. And you do have some familiarity with this dispute between  
25 Meda and 3M?

DlfQmed6

Haas - direct

1 A. Yes, based on the interactions we talked about just a  
2 minute ago.

3 Q. Do you recall when the transaction that's at the heart of  
4 this dispute ultimately took place either signed or closed?

5 A. I believe it was November 2006.

6 Q. Do you remember when it closed?

7 A. My recollection it was around the end of that year. I  
8 don't recall if it was before or after the end of the year;  
9 sometime in that time frame.

10 Q. And Goldman Sachs was advising the seller, is that  
11 accurate?

12 A. Correct, we advised 3M.

13 Q. Which company or companies of 3M were you working on behalf  
14 of?

15 A. I don't understand the question.

16 Q. What company did you understand was selling its business?

17 A. 3M.

18 Q. Can you differentiate between any 3M subsidiaries or did  
19 you just refer to it as 3M?

20 A. I just referred to it as 3M.

21 Q. Who did you understand was buying the business?

22 A. The business we're talking about was Meda; that was the  
23 purchaser.

24 Q. Where did you understand Meda was from?

25 A. A Swedish company.

DlfQmed6

Haas - direct

1 Q. Now, is it correct that Goldman Sachs was the financial  
2 adviser to 3M?

3 A. Yes.

4 Q. And as the financial adviser to 3M, does 3M ultimately pay  
5 your fee if there's a successful acquisition?

6 A. Yes.

7 Q. And is that what happened in this case?

8 A. Yes, I believe they paid our fee. I don't recall exactly,  
9 but I believe they did.

10 Q. Do you recall when it was that you first learned 3M was  
11 interested in divesting or selling its pharmaceutical business?

12 A. I don't recall exactly, but my recollection it was  
13 approximately a year or so, maybe a little bit longer before  
14 the November transaction actually occurred.

15 Q. So, would it be fair to say sometime in late 2005?

16 A. That's about my recollection. Maybe the summertime. Maybe  
17 later. I don't recall exactly.

18 Q. And is it correct that by January 2006, you and Goldman  
19 Sachs were already working on advising 3M in connection with  
20 its sales and business?

21 A. I believe that's right. I don't remember the exact time  
22 frames, but it was along those lines.

23 Q. You mentioned that you're in the -- you're a banker in  
24 health care. Do you have experience dealing with  
25 pharmaceutical companies?

DlfQmed6

Haas - direct

1 A. Yes, my principal responsibility has been working with  
2 pharmaceutical companies.

3 Q. Over the course of your career, how many transactions  
4 either representing buyer or seller would you estimate you've  
5 been involved in involving pharmaceutical or health care  
6 companies?

7 A. I don't know exactly. I'll say something in the order of  
8 magnitude of 50 or so.

9 Q. And is your understanding that's why in connection with the  
10 3M sale of the business you were asked to be a part of the  
11 banking team?

12 A. Yes.

13 MR. WIDELL: Your Honor, Mr. Haas may have been  
14 compelled to be here by subpoena, but these questions are  
15 awfully close to leading or are leading questions, apart from  
16 opening questions.

17 MR. CARLINSKY: I'm trying to do it as efficiently as  
18 I can, your Honor.

19 THE COURT: You'll have to follow the rules. A little  
20 bit of leeway, but let's do non-leading questions.

21 Sustained.

22 BY MR. ARMENIO:

23 Q. In connection with the Meda 3M transaction -- strike that.  
24 Let me ask it a different way. Ultimately, did 3M, was 3M  
25 successful in selling its business?

DlfQmed6

Haas - direct

1 A. The businesses were sold, so we successfully completed the  
2 transactions.

3 Q. How was the business sold? Was it sold as a single  
4 business? Was it sold as parts? What's your recollection?

5 A. There were three pieces.

6 Q. What were they?

7 A. The Americas, Europe and Asia, broadly speaking.

8 Q. To your recollection, was the sale of the business in three  
9 separate parts more successful to 3M than whatever potential  
10 sale there had been of the business as a whole?

11 A. Yes. We didn't have an effective buyer for the whole  
12 business, so the way to sell the business was in three  
13 components.

14 Q. Were there efforts made to sell the business as a whole?

15 A. There were.

16 Q. Is it your testimony, Mr. Haas, from recollection that  
17 despite the effort to sell the business as a whole, there was  
18 no viable buyer for the business as a whole?

19 A. That's my recollection.

20 Q. OK. Now, I'd like to bring up, if you can, PX-303.

21 MR. ARMENIO: I'd like to move this into evidence. I  
22 understand from the pretrial order, there is no objection to  
23 this document.

24 THE COURT: Counsel, let me just, defendants.

25 MR. WIDELL: No objection, your Honor.

DlfQmed6

Haas - direct

1 THE COURT: Plaintiff's 303 is admitted.

2 (Plaintiff's Exhibit 303 received in evidence)

3 Q. Mr. Haas, this is a document I think we looked at this in  
4 your deposition as well. This is a script from a presentation  
5 that was made to 3M's board of directors in November 2006 in  
6 connection with asking the board to approve the sale of the  
7 business. Do you have that general recollection?

8 THE COURT: Do you have the whole document?

9 Q. Yes. In fact, Mr. Haas, if you'd like, it's in front of  
10 you. It should be the very first tab -- I'm sorry.

11 A. 303, you said?

12 Q. Yes.

13 A. I got it here. Sorry. What's the question?

14 Q. Do you recognize this as the script that Mr. Sauer used at  
15 the board meeting that you attended in November of 2006?

16 A. I don't recognize it directly as the script. I can read  
17 through it, but I don't know that I have seen this or had it.

18 Q. I'm sorry?

19 A. I don't know that I have seen it or had it, but I recognize  
20 it as a script to the board.

21 Q. You did attend the board meeting in November, correct, when  
22 the board was being asked to approve the sale of the  
23 transactions?

24 A. I presume I did, but I don't recall specifically.

25 MR. CARLINSKY: Your Honor, I'd like to give the Court

DlfQmed6

Haas - direct

1 a copy.

2 THE COURT: For some reason, I have a binder that ends  
3 at 300, the next one begins at 304. Fancy that, all the paper  
4 I have up here and the one I need.

5 A. It says here I'm on the telephone, actually, in the third  
6 paragraph. So I wasn't actually at the meeting.

7 Q. I'd like you to turn, if you would, please, to the first  
8 page -- well, obviously there's a reference there to you  
9 joining by telephone.

10 Then I direct your attention to the second page. You  
11 see there's a reference there to a quote "This sum of the parts  
12 approach has enabled us to get a good price at 2.2 billion."

13 Do you see that there?

14 A. Yes, I do.

15 Q. And if you turn to the third page, actually with the number  
16 3, so it ends with the Bates number 388. It says, "The total  
17 of 2.2 billion is well above the only global bid of  
18 1.5 billion, which in addition to being low, was not very  
19 certain."

20 Do you see that?

21 A. I do.

22 Q. Is that consistent with your recollection that the result  
23 of selling the business in three parts resulted in a total  
24 purchase price to 3M of roughly \$700 million more than whatever  
25 the global bid represented?



DlfQmed6

Haas - direct

1 A. That's what this represents. That's, you know, not  
2 inconsistent with my recollection.

3 Q. You understand what we're looking at, this particular  
4 document, PX-303, Mr. Sauer was the person making the  
5 presentation, correct?

6 A. It appears that way.

7 Q. And that's consistent with your recollection?

8 A. Yes.

9 Q. Mr. Sauer -- you do know who Mr. Sauer is, correct?

10 A. Yes.

11 Q. In connection with the work you were doing, had you met  
12 him?

13 A. Yes.

14 Q. What was his position at the time?

15 A. I believe he was the head of the health care business for  
16 3M.

17 Q. Was it your understanding that he was the senior most  
18 person overseeing the entire health care business?

19 A. That was my recollection. That's my recollection.

20 Q. Just so we're clear, the health care business, one  
21 component of it, is that pharmaceutical?

22 A. Correct.

23 Q. And if you look to, please, page 6. Here Mr. Sauer states,  
24 you'll see "How our final valuation compares to our previous  
25 estimate and walk-away position."

DlfQmed6

Haas - direct

1 Do you that?

2 A. I do.

3 Q. And then below he says, "Over all, we greatly exceeded our  
4 fears about what we might have to accept for this challenged  
5 business, and solidly exceeded our estimate and expectations."

6 Do you see that?

7 A. I do, yes.

8 Q. Do you have a recollection of those remarks or  
9 understanding of what Mr. Sauer meant by those remarks?

10 A. I don't recall him saying that per se.

11 Q. OK. Looking up, you see there's a table that says Pharma  
12 Sale Valuation?

13 A. Yes.

14 Q. And there's a line there, it says Sale Total Consideration,  
15 and then there's a line under it that says GS Est, the sale  
16 price average range. Do you see that?

17 A. I do.

18 Q. Is your understanding the GS there is Goldman Sachs?

19 A. Yes, that would be consistent.

20 Q. And is it consistent that the estimated sale price that  
21 Goldman Sachs estimated for the entirety of the pharmaceutical  
22 business that 3M was selling was 1.875 billion?

23 A. Based on what it says here, that says it's an average of  
24 range. I don't know what the range was, but that's what it  
25 says on the page. I don't recall the exact numbers.

DlfQmed6

Haas - direct

1 Q. Below that, there is a line that says Worst Case Keep  
2 Value. Do you see that?

3 A. I do.

4 Q. Do you remember whether 3M or Goldman ran some type of  
5 analysis of what price had to be exceeded otherwise they would  
6 keep the business?

7 A. I don't recall what the keep value is based upon.

8 Q. But irrespective of what the keep value is based upon, do  
9 you recall the fact that such a value was in fact determined by  
10 3M?

11 A. I recall they had, you know, a -- you know, an internal  
12 value, if you will, for the business.

13 Q. Is it your understanding that the number we're looking at,  
14 the 1288 was their internal value for the business?

15 A. It would appear that way, but I don't recall the numbers.

16 Q. Is it your best belief looking at this or is it at least  
17 consistent with your best belief as to what the then internal  
18 value of 3M had for the business?

19 A. It would appear that way based on this page, but, again, I  
20 don't have a direct recollection of it.

21 Q. If we look at page 7 -- by the way, just going back to  
22 Mr. Sauer's comment about the challenged business, do you  
23 recall any discussion with Mr. Sauer or anyone from 3M in which  
24 they describe their Pharma business as a challenged business?

25 A. I don't recall that terminology, no. I do know that the

DlfQmed6

Haas - direct

1 business was not important to them, and that's how we thought  
2 about it, but I don't recall the words challenged.

3 Q. Do you recall anyone at 3M ever advising you or expressing  
4 to you their concern that the business was in a declining  
5 growth mode rather than a growing or expanding growth mode?

6 A. We talked about the fact that the business was kind of a  
7 flat, low-growth business, and it was business that was  
8 non-core, so they were not interested in continuing to make  
9 investments to make it grow again. Those are the nature of the  
10 discussions we had.

11 Q. So, the way in which the business was described to you was  
12 a flat business as opposed to one that was --

13 A. A low-growth business.

14 Q. Low growth. There is a difference, by the way, between  
15 flat and low growth, do you agree?

16 A. There can be. I'm using a very general term. It was a  
17 non-growing business maybe is a better way to say it.

18 Q. Non-growing? Is that what your answer was?

19 A. Why don't you ask the question again. I'll try to be more  
20 specific with my answer.

21 Q. I'm just trying to understand what you were told by 3M how  
22 they described the business. Was it described to you as a flat  
23 business? Was it described to you as a low-growth business?  
24 I'm just using your phraseology.

25 A. Yeah, fair enough. I don't recall the specific, you know,

DlfQmed6

Haas - direct

1 characterization of the business.

2 Q. Irrespective of their characterization, did you, from the  
3 materials and the information that was supplied to you, have a  
4 view as to whether the business was a flat business, a  
5 low-growth business, a declining growth business or something  
6 else?

7 A. The characteristics of the different pieces were actually  
8 different from one another, which is I guess why I'm struggling  
9 a little bit to characterize the overall business. Certain  
10 businesses were growing faster than other business segments.

11 Q. Then we'll get to them in specific pieces, but while we're  
12 on this document, so we can finish up, if you would look at  
13 page 7, please.

14 A. Sure.

15 Q. You'll see Mr. Sauer remarks, he says, "As Goldman will be  
16 walking us through a more detailed analysis of value, I will  
17 just hit the high points." And he writes, "On a global basis,  
18 the transaction is valued at 10 X reported EBITDA and 7 X  
19 adjusted numbers."

20 Do you see that?

21 A. I do.

22 Q. And you do you understand that one way of valuing a pharma  
23 business, that you looked at in fact as Goldman Sachs, was to  
24 look at a multiple of EBITDA, is that right?

25 A. Correct.

DlfQmed6

Haas - direct

1 Q. By the way, in some or all of the prior deals that you said  
2 you worked on 50 deals, is that a common valuation methodology  
3 that you've used as a banker is to look at a multiple of EBITDA  
4 in trying to arrive at the value of a company?

5 A. It's one of the metrics we would use for sure.

6 Q. In fact, one of the metrics you did use here at the outset  
7 of the transaction?

8 A. It would appear that way.

9 Q. Now, did Goldman Sachs prepare something called a fairness  
10 opinion?

11 A. We did.

12 Q. Just very briefly, because I realize it's late in the day,  
13 and I'm sure the Court knows or has appreciation for what it  
14 is, can you very briefly describe what a fairness opinion is?

15 A. It's an analysis of the valuation of a company, and whether  
16 we think that the company, whether it's a buyer or a seller, is  
17 getting or paying a fair price for a business, you know, based  
18 on a number of different metrics.

19 Q. We're going to get to the fairness opinion in a moment.

20 Let me ask you this: Do you recall as a result of the  
21 \$2.2 billion, give or take, that 3M ultimately received, how  
22 much of a profit -- or let me state it differently, pretax gain  
23 3M reported on the sale of the business?

24 A. I have no recollection.

25 Q. Can I see if turning to page 13 of exhibit 303 helps

DlfQmed6

Haas - direct

1 refresh your recollection. This is the page ending Bates  
2 number 398.

3 A. OK, I'm looking at it.

4 Q. Does that document refresh your recollection, sir?

5 A. Not really. I can see what it says on the page, but I  
6 don't have any independent recollection of the profit in the  
7 business or the gain.

8 Q. Do you see that at least in Mr. Sauer's comments to the  
9 board, he indicates that "3M will report a pretax gain of  
10 approximately \$1.9 billion."

11 Do you see that there?

12 A. I do.

13 Q. Is that at least consistent with what you understood at the  
14 time was the reported pretax gain?

15 A. I don't have any recollection at the time.

16 Q. None at all. So you don't know whether that's consistent  
17 or inconsistent?

18 A. I see what it says on the page, but I don't have any  
19 independent recollection of it.

20 Q. I appreciate that. If you would kindly turn to Exhibit 99.  
21 This is JX-99. You should have it in front of you.

22 A. I have it.

23 MR. ARMENIO: It might be easiest if I give the Court  
24 a copy.

25 THE COURT: Probably would.

DlfQmed6

Haas - direct

1 MR. CARLINSKY: I don't want to add more paper to the  
2 piles. I'm happy to take them back. Thank you. Just a piece  
3 of housekeeping. I'd move Exhibit 99.

4 THE COURT: It's in.

5 MR. ARMENIO: This one's in.

6 Q. Mr. Haas, what is Exhibit 99?

7 A. This looks like the fairness presentation for the 3M deal.

8 Q. Is it your understanding that these were the materials that  
9 were actually provided to the 3M board?

10 A. I presume that they were provided to the board.

11 Q. Is that your best belief?

12 A. I guess so. I mean, I don't, you know, recall if it was  
13 this version or another version or if we provided a fairness  
14 opinion, I don't recall if we did or not, but I presume we did  
15 based on what this looks like.

16 Q. If you would, please, turn to page 27. It ends in Bates  
17 367. You'll see at 27, this indicates "3M Pharma business  
18 Europe business overview." Just as a predicate, is it correct  
19 that Goldman Sachs provided fairness opinions with respect to  
20 each of the three segments of the business that was sold?

21 A. I actually don't recall whether we provided a fairness  
22 opinion or not in general terms, so I don't recall if we did on  
23 an individual business-by-business basis. I don't doubt that  
24 we did even though we prepared fairness materials, but I don't  
25 recall whether we actually presented them or not to the board.



DlfQmed6

Haas - direct

1 Q. Fair enough. Is it the case that in the course of the sale  
2 transactions there were preliminary bids by potential  
3 purchasers, and then at some later point in time there were  
4 binding or final bids?

5 A. Yes.

6 Q. Can you just very briefly describe to us the process, how  
7 the process went from preliminary bids to final bids?

8 A. In general terms, we got preliminary bids from various  
9 parties, I believe, for the whole business, and then for the  
10 different components of the businesses. Parties were then  
11 afforded the ability to conduct due diligence for a period of  
12 time. I don't recall for how long. And then they were asked  
13 to ultimately provide final bids based on, you know, the  
14 diligence that they completed.

15 Q. If you would turn to page 28, the next page of the  
16 document.

17 A. Yes.

18 Q. It indicates "summary of bids Europe." It has four names,  
19 and it has columns. I just want to make sure we're clear that  
20 this is accurate and consistent with your recollection. Meda  
21 made a preliminary bid of \$800 million for the European  
22 business?

23 A. Yes, it appears that way.

24 Q. Is that consistent with your recollection?

25 A. Roughly, I don't remember the specifics, but that seems

DlfQmed6

Haas - direct

1 reasonable.

2 Q. And the next party down is a company called Almirall that  
3 made a preliminary bid of 850 million?

4 A. Right.

5 Q. Then there are two other companies that made preliminary  
6 bids; one at 542 million and one at 350 million?

7 A. That's what it appears, sure.

8 Q. Then as I understand it, preliminary bids, they're not  
9 binding, is that correct?

10 A. Correct.

11 Q. But at the point in time when final bids are submitted, are  
12 those intended or at least understood to be binding?

13 A. They're understood to be generally binding subject to  
14 completion.

15 Q. The preliminary bids, at that point that purchasers make a  
16 preliminary bid, do they have the offering memorandum?

17 A. I don't recall. I presume they did, but I don't recall  
18 specifics.

19 Q. And just looking at the next column here, final bids. We  
20 see that Meda made a final bid of \$825 million?

21 A. Yes, I see.

22 Q. And then it actually indicates a final purchase price of  
23 \$856 million?

24 A. I see that, yes.

25 Q. And then with respect to Almirall, its final bid came in at

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Haas - direct

1 \$700 million?

2 A. Correct. I see that.

3 Q. And the other two companies seem to have dropped off the  
4 page?

5 A. That's what it appears, yes.

6 Q. Is that consistent with your recollection?

7 A. That's generally consistent with my recollection.

8 Q. So to the extent that Meda paid \$856 million, am I correct  
9 that it paid 156 million more than the next and only bidder for  
10 the business?

11 MR. WIDELL: Objection, your Honor. This is assuming  
12 facts not in evidence. There's been no foundation. There's  
13 been no foundation that Meda actually paid \$856 million at  
14 closing, much less cash that's reflected. This is  
15 significantly before the closing of the transaction.

16 MR. CARLINSKY: I will restate question.

17 Q. Mr. Haas, Meda paid, I don't think it's in dispute, 850  
18 something million dollars. So I'll leave the last digit as a  
19 something. Would I be correct to the extent Meda paid 850  
20 something million dollars for the business, it paid at least a  
21 hundred 50 million more than the next and only other bidder for  
22 the business?

23 A. Yeah, when you compare the 850 something to 700, that's a  
24 hundred 50-ish million dollars more.

25 Q. At the point when Meda made its final bid and then

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Haas - direct

1 ultimately the final purchase price, did you believe that  
2 Goldman Sachs had conducted a proper auction for the business?

3 A. I believe we did.

4 Q. What's that based upon?

5 A. We -- I believe there was a public announcement that 3M was  
6 planning to divest the business. So we, Goldman Sachs, reached  
7 out to parties that we thought would be interested in buying  
8 the business, and we also were receptive to phone calls of  
9 parties that inquired about the business, so we ran the process  
10 based on that input.

11 Q. In your experience as a banker, do you believe that the  
12 fair value of the business was bought following an auction an  
13 arm's length buyer was willing to pay for the business?

14 A. Can you repeat that question?

15 Q. Did you as a banker understand that the fair value, the  
16 value of this particular business, or any business for that  
17 matter, sir, is what following an auction an arm's length  
18 purchaser is willing to pay for the business?

19 A. I think so, yeah.

20 Q. Did you feel that in this particular case that process  
21 resulting in the bid from Meda was an accurate reflection of  
22 the valuation of the business based upon whatever the  
23 assumptions were that went into that bid?

24 A. It was the price for this business, and the other  
25 businesses were reflective of what parties are willing to pay

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Haas - direct

1 for the business, if that's your question.

2 Q. Now, I want to go back -- we were looking at documents in  
3 October. I want to go back to the point in time earlier on in  
4 the process when you were first advising 3M about potential  
5 sale of the business before there were any bidders. At that  
6 point in time, did Goldman Sachs conduct any analyses to try to  
7 arrive at a range of valuations for either the entirety of the  
8 business or the three segments of the business?

9 A. I'm sure we did preliminary valuation work which we shared  
10 with 3M to give them a sense as to what the business could be  
11 worth.

12 Q. At that point in time, again, before bidders started or  
13 before materials went out and the process was sold as part of  
14 an auction, did you use an EBITDA multiple valuation as a  
15 metric for arriving at a preliminary recommended value or price  
16 for the business?

17 A. I don't remember what we put in front of 3M and the  
18 analysis we did specifically, but, you know, in general course,  
19 that would have been a component of an overall valuation  
20 analysis.

21 Q. When you, Goldman Sachs, were preparing whatever analyses  
22 you were for purposes of advising on valuation, did you rely on  
23 information provided from 3M?

24 A. We would have, yes.

25 Q. What kind of information?

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Haas - direct

1 A. Generally speaking, their internal financial projections  
2 for the business, and some qualitative assessment of the  
3 overall business to put the numbers in context.

4 Q. Did your valuations run off of the projections that were  
5 received from 3M?

6 A. I presume they did, but I don't again recall the specific  
7 numbers.

8 Q. Well, without regard to the specific numbers, is it your  
9 practice -- your, meaning you, Mr. Haas, and Goldman Sachs --  
10 that in determining the valuations, what you do is you turn to  
11 the company on whose behalf you're advising, and you ask for  
12 the company's financial projections, and you use those to build  
13 your model?

14 A. That's correct, yes.

15 Q. Do you have any reason to believe you did it any  
16 differently here?

17 A. I don't.

18 Q. Is it also the case that you're relying upon the company  
19 that's providing you with the projections to provide you with  
20 what it believes are the most accurate projections?

21 A. Yeah, that's our assumption and what we strive for.

22 Q. Now, we looked at the comment earlier by Mr. Sauer about  
23 selling or referencing the challenged business. Do you  
24 remember that remark generally we looked at?

25 A. I remember generally you mentioned that one.

DlfQmed6

Haas - direct

1 Q. Did you understand that 3M had concern about its ability to  
2 either sell the business or achieve a particular price for the  
3 business?

4 A. The concern that I recall 3M expressing was that if we were  
5 not able to sell the business as a whole, which would have been  
6 a simpler transaction, and we went to sell the business in  
7 pieces, these three pieces I mentioned, the concern was if they  
8 couldn't sell one of the pieces, would they be left with one  
9 particular piece or two particular pieces and have a business  
10 that was not, you know, the full business.

11 Q. Did you also have a concern -- did you also have an  
12 understanding that 3M was concerned whether it would even be  
13 able to find buyers for the business as a whole or the various  
14 parts?

15 A. I think there was a question as to whether we would have a  
16 successful transaction, but I don't think there was any more or  
17 less concern, you know, at various junctures of the process.

18 Q. Can we bring up PX-129, please.

19 MR. WIDELL: I'm sorry for interrupting. I just want  
20 to put the Court on notice that it's my understanding that  
21 Mr. Haas basically spent most of his day here today waiting to  
22 go on and is not going to be available tomorrow. And I'm sort  
23 of stating a problem without a solution.

24 THE COURT: I always appreciate that.

25 MR. WIDELL: Maybe we can split the remaining time or

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Haas - direct

1 something like that or --

2 THE COURT: How much longer Mr. Carlinsky?

3 MR. CARLINSKY: I would have, I would say, at least an  
4 hour. Your Honor, Mr. Haas is under subpoena. I was  
5 originally the main proponent multiple times of not having  
6 Mr. Haas come at all. I suggested it be done by deposition  
7 designations. We had strenuous objections from my friends at  
8 the other table. Now, Mr. Haas -- and I do feel for him and  
9 I've tried to be as accommodating as possible -- but I do have  
10 an examination, and I would like to conclude it. I won't do it  
11 today, but certainly we will do it within the first two hours  
12 tomorrow morning.

13 THE COURT: Well, here is what we're going to do.  
14 We're going to keep going now because no matter what, we're not  
15 going to get done tonight, and then I am going to ask the two  
16 of you to work with Mr. Haas to figure out a time to finish  
17 over the course of, if we need to take things out of order or  
18 the like, but see if you can't figure it out. But while we've  
19 got Mr. Haas here, we'll keep going.

20 MR. WIDELL: We'll do that, your Honor.

21 (Continued on next page)  
22  
23  
24  
25



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Haas - direct

1 Q. Mr. Haas, directing your attention back to PX 129 --

2 MR. CARLINSKY: Which I will also move into evidence  
3 at this point. I understand there is no objection?

4 THE COURT: PX 129.

5 MR. WIDELL: No objection, your Honor.

6 THE COURT: It is admitted.

7 (Plaintiff's Exhibit 129 received in evidence)

8 BY MR. CARLINSKY:

9 Q. If you look at PX 129, you'll see that Mr. Keel from 3M --  
10 you do know who Mr. Keel is?

11 A. Yes.

12 Q. He was an executive at 3M in connection with the sale of  
13 the business?

14 A. Yes.

15 Q. He was writing, you'll see he was writing to you and  
16 Mr. Kim an E-mail at 2:03 pm on the page ending 620 and he says  
17 please see Jim Vaughan's comments below regarding potential  
18 pharma buyers, and he says we need to make sure we leverage GS  
19 global reach on this one.

20 Do you see that statement?

21 A. Yes.

22 Q. If you look down, you'll see on the next page, the page  
23 ending 621, there is a comment from Mr. Sauer on the E-mail and  
24 he says to Paul Keel, quoting in the first line, "Please make  
25 sure GS has their global hat on in pulling out all the stops to

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Haas - direct

1 sell pharma." Do you see that?

2 A. I do, yes.

3 Q. And when you saw those comments, did that reflect in your  
4 mind concern by 3M that they might have a problem selling this  
5 particular business?

6 A. I don't recall, you know, the time of my seeing this  
7 E-mail, but it is consistent with what I said before, that if  
8 they were to sell the whole business, they wanted to make  
9 sure -- if they were to sell the business in pieces, they  
10 wanted to sell all the pieces at the same time.

11 Q. That is what you understood from the comment, make sure to  
12 pull out all the stops?

13 A. Again I don't recall reading this at the time, but my  
14 reading of it today is reflective of what I just said.

15 MR. CARLINSKY: If we can bring up, please, PX 137. I  
16 move this into evidence. I understand there is no objection?

17 MR. WIDELL: No objection.

18 THE COURT: PX 137 is admitted.

19 (Plaintiff's Exhibit 137 received in evidence)

20 BY MR. CARLINSKY:

21 Q. If you look at the second page, there is an E-mail from  
22 Lawrence Kim to Howard Rowe and to yourself. Do you see that?

23 A. I do.

24 Q. Mr. Kim was part of your team?

25 A. Yes.

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Haas - direct

1 Q. And Mr. Rowe, was he also part of your team?

2 A. Not part of the time working on 3M. He was a colleague who  
3 worked in the London office at the time.

4 Q. Mr. Kim, was he working closely with you?

5 A. He was, yes.

6 MR. WIDELL: Objection. This is leading back into a  
7 lot of leading questions.

8 THE COURT: It certainly is and has.

9 MR. CARLINSKY: I am happy to go to a direct format.

10 I am just trying to lay some background and foundation  
11 and be as efficient as possible. I am happy to make this  
12 longer if Mr. Widell thinks it would somehow --

13 THE COURT: He has given you a fair amount of leeway.  
14 He has not objected earlier.

15 BY MR. CARLINSKY:

16 Q. Mr. Haas, what, if anything, did Mr. Kim tell you about  
17 what key products were?

18 A. I didn't hear the tail end of that question.

19 Q. What, if anything, did Mr. Kim in his E-mail tell you about  
20 what the key products were?

21 A. Based on what it says in the E-mail?

22 Q. Yes.

23 A. (No answer)

24 Q. Which Tambocor?

25 A. Tambocor CR. I am reading what it says here.

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Haas - direct

1 Q. Turning to the first page, there is an E-mail from Mr.  
2 Rowe?

3 A. Yes.

4 Q. By the way, where was Mr. Rowe located?

5 A. He was in our London office.

6 Q. What role, if any, were you looking for him to play in  
7 connection with the sale of the business?

8 A. He would have been one of the people that we would have  
9 reached out to to determine which buyers may or may not be  
10 interested in the business.

11 Q. Do you see Mr. Rowe's reaction, what a mix, exclamation  
12 point. Unless I am missing a trick, I do not think the big  
13 boys are going to be interested here.

14 Do you see that?

15 A. I do.

16 Q. When you received that E-mail, what, if any, concern did  
17 you have about the ability to sell the European part of the 3M  
18 business?

19 A. That the large cap pharma companies would not likely have  
20 an interest in the business, which was consistent with our  
21 perspective.

22 Q. Did you believe the universe of potential purchasers was,  
23 therefore, narrow or something else?

24 A. We always believed --

25 MR. WIDELL: Objection; leading.

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Haas - direct

1 MR. CARLINSKY: That is why I put in "or something  
2 else."

3 THE COURT: Well, sustained.

4 BY MR. CARLINSKY:

5 Q. What, if any, reaction did you have in terms of whether  
6 there would be a limited universe of potential purchasers?

7 A. It was consistent with our perspective going into the  
8 process that the large cap pharma companies would not likely be  
9 interested in the business.

10 Q. Did you have any understanding from the E-mail that we just  
11 looked at as to how significant a product Tambocor CR was in  
12 the European pharma business?

13 A. I am sure I did at the time. I don't recall the details of  
14 it now.

15 Q. I am not necessarily asking about details, but did you  
16 understand that it was a dominant product? Did you understand  
17 it was a very significant product? Did you have some other  
18 understanding?

19 A. My recollection is it was a significant product, but I  
20 don't recall anything more than that.

21 Q. Did you understand it to be one of the key products, as  
22 Mr. Kim reflects in his E-mail, or did you have some other  
23 understanding?

24 A. I don't have reason to doubt that this E-mail is accurate,  
25 but I don't recall again the details from back then.

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Haas - direct

1 Q. At the time that you were working on the potential sale of  
2 the 3M pharma, Europe pharma business, did you have an  
3 understanding as to from what country the bulk of Tambocor CR  
4 sales came?

5 A. I am sure I did at the time, but I don't recall offhand  
6 now.

7 Q. Now, during the course of the work that you were doing on  
8 behalf of 3M, would it be fair to say you discussed Tambocor CR  
9 or Tambocor LP as it has been referred to with 3M?

10 A. I am sure we did, yes.

11 Q. You say you are sure you did.

12 Would it be fair to say in the course of the work you  
13 did, you had discussions about any of the key or significant  
14 products?

15 A. Sure, in the normal course we would have talked about all  
16 the significant products in the portfolio.

17 Q. What, if any, understanding did have regarding whether --  
18 let me lay a predicate.

19 Did you understand there was more than just the  
20 Tambocor CR product?

21 A. My recollection is that there was an IR product, I believe,  
22 and there was a CR product that was to follow.

23 Q. Did you have an understanding as to in which way the  
24 balance was shifting in terms of sales, in favor of the IR  
25 product or in favor of the CR product?

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Haas - direct

1 A. In favor of the CR products.

2 Q. Do you recall that the key country for the Tambocor  
3 products was France?

4 MR. WIDELL: Objection, your Honor, just continues to  
5 be leading.

6 THE COURT: Sustained.

7 BY MR. CARLINSKY:

8 Q. Would you turn to PX 168. It will be in your binder.

9 A. Yep, I've got it.

10 Q. Would you turn to page in the 0M, Page 3 ending 616.

11 A. Okay.

12 Q. Do you see there there is a Table 2 and there is a  
13 breakdown by region, and then it indicates Europe?

14 A. I see it.

15 Q. Take a moment, if you would, to read that because I want to  
16 see whether that helps refresh your recollection as to whether  
17 what you understood at the time was the country --

18 THE COURT: You didn't ask him yet. Just ask him.

19 MR. CARLINSKY: I did. I did. He said he didn't  
20 recall. Then I posed France, and I was told I was leading.

21 THE COURT: I don't think he said he didn't recall.

22 Do you remember what country was the key country where  
23 Tambocor was --

24 THE WITNESS: Now looking at this, it strikes me as  
25 France. That is not inconsistent with my recollection.

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Haas - direct

1 THE COURT: Fair enough, Mr. Carlinsky.

2 THE WITNESS: I can't recall offhand.

3 THE COURT: Thank you. You have the answer, yes?

4 MR. CARLINSKY: Yes, now I do.

5 BY MR. CARLINSKY:

6 Q. Mr. Haas, what was your understanding again in terms of  
7 which direction sales of Tambocor in France were heading, in  
8 favor of IR or in favor of CR?

9 A. I don't recall the specifics. I do recall that the IR  
10 version was becoming generic, I believe, and the CR version was  
11 being launched. I don't remember the timing. I assume that  
12 trend was consistent in France, but I don't recall the  
13 specifics on the country.

14 Q. You don't recall in which direction the sales were  
15 trending?

16 A. No. I'll make an educated guess.

17 Q. No, I don't want you to make an educated guess?

18 A. I can look at the numbers, but I don't recall offhand.

19 Q. Do you want to look back to plaintiff's PX 168.

20 A. Okay.

21 Q. I direct your attention to Page 82 which ends at the  
22 bottom, Bates number Meda 188692. You'll see if you look down  
23 four sentences, I believe it is four sentences, it says parents  
24 in --

25 (Pause)



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Haas - direct

1 A. Sorry. You're on Page 82, you said?

2 Q. 82 of the offering memo.

3 A. Okay.

4 Q. And --

5 A. Sorry. At the top?

6 Q. You see it has fiscal Year 2006 key forecast assumptions?

7 A. Yes.

8 Q. By the way, Goldman Sachs played a role in preparing the  
9 offering memorandum. Is that accurate?

10 A. Yes.

11 Q. Looking at the line that talks about if patients in France  
12 switch from Tambocor IR to Tambocor CR, some of these prices  
13 issues may be offset. Do you see that?

14 A. Yes, I see that.

15 Q. And referring to the prior sentence where there was  
16 government pricing mandates that reduce selling price, do you  
17 see that?

18 A. I do.

19 Q. Does that help refresh your recollection, sir, as to in  
20 which direction you understood the sales of Tambocor CR were  
21 trending?

22 A. I recall as a general matter they were trending down in IR  
23 and up in CR in Europe generally. I don't recall the country's  
24 specific dynamics.

25 Q. You said -- take that down. We will be looking at the OM,

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Haas - direct

1 I suspect, the next time we get together in more detail. You  
2 said something about IR. You understood IR was under generic  
3 attack, I think you said?

4 A. I believe the patent expired or was going to expire in IR.

5 Q. Did you also understand that there was still patent life  
6 left on CR?

7 A. I believe so.

8 Q. Did you have an understanding that CR, Tambocor CR was  
9 under generic attack?

10 A. I don't have any recollection of that.

11 Q. In fact, your recollection would be to the contrary,  
12 correct?

13 A. My presumption would be to the contrary. I don't have  
14 specific recollection.

15 MR. WIDELL: Objection, your Honor; leading.

16 THE COURT: I'll allow that one.

17 BY MR. CARLINSKY:

18 Q. Now, as an investment banker, as you say, with  
19 pharmaceutical experience and having worked on deals, did you  
20 have some understanding of pricing pressures generally in  
21 Europe?

22 A. In general terms.

23 Q. What was your general understanding of pricing pressures in  
24 Europe?

25 A. There was pricing pressure in Europe in the sense that

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Haas - direct

1 prices were generally moving downward as opposed to upward.

2 Q. Okay. Did you believe that prices were also stable in  
3 Europe?

4 A. I don't recall the specifics from that point in time.

5 Q. Now, do you recall having any discussions during the time  
6 that you were working on the transaction with 3M management  
7 about any specific pricing agreements that existed between 3M  
8 and any European governments?

9 A. I don't recall one way or the other. I just don't recall  
10 the dialogue.

11 Q. If I may, I would like to show you your deposition  
12 testimony.

13 THE COURT: What page?

14 MR. CARLINSKY: It is 96 line 16 to 24, 98 lines 3  
15 through 9.

16 THE WITNESS: Do I have it here or is it only on the  
17 screen?

18 MR. CARLINSKY: I am going to give it to you. If I  
19 may, your Honor, approach. You can look at it on the screen,  
20 but this may be faster.

21 THE WITNESS: Okay. What page did you say?

22 MR. CARLINSKY: First would you go to 96, 16 to 24,  
23 and then 98, 3 through 9.

24 (Pause)

25 A. Sorry. I am on 96. The Question 16?

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Haas - direct

1 Q. Yes.

2 A. Through 24?

3 Q. Yes. Does that help refresh your recollection that, in  
4 fact, there was no dialogue between you and 3M executives  
5 regarding any specific pricing agreements that may have existed  
6 between 3M and any European governments?

7 A. I think that this is the same answer I just gave you which  
8 is I don't recall one way or the other whether there was  
9 dialogue about this issue or not.

10 MR. WIDELL: Objection.

11 THE COURT: Sustained. It seems to me to be the same  
12 answer.

13 BY MR. CARLINSKY:

14 Q. Do you recall being shown any specific pricing agreements  
15 by 3M?

16 A. Again it is the same answer, I don't recall one way or the  
17 other whether I saw something or didn't see anything about that  
18 specific issue.

19 Q. You have no recollection one way or the other?

20 A. I do not have any recollection one way or the other.

21 Q. Again looking at your testimony Page 98 lines 3 through  
22 9 --

23 A. 98, 3 through 9?

24 MR. WIDELL: The same objection.

25 THE COURT: Sustained.

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Haas - direct

1 BY MR. CARLINSKY:

2 Q. And 97, at 17?

3 A. Sorry? 97, line 17?

4 Q. Yes, sir.

5 A. Okay. What is the question?

6 Q. My question is, does this help refresh your recollection  
7 that you previously testified --

8 A. Okay.

9 Q. -- that you did not see any specific agreements? You can  
10 look at the questions and the answers for context.

11 A. I don't know. I don't have a recollection one way or the  
12 other on this, on this particular question.

13 MR. WIDELL: Your Honor, maybe so the record is clear,  
14 at least me, I am not actually sure what the question is unless  
15 it is just a follow-through from --

16 THE COURT: He asked if it refreshes his recollection  
17 with respect to whether he has seen any specific agreements,  
18 and the answer is no, that he doesn't recall seeing any one way  
19 or the other.

20 MR. CARLINSKY: Right.

21 BY MR. CARLINSKY:

22 Q. I am looking at his deposition testimony, and I am asking  
23 you, Mr. Haas, do you see that in your deposition, at Page 97,  
24 at line 17 at the end of your answer there, you stated "so we  
25 didn't see specific agreements."

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Haas - direct

1 Do you see that, sir?

2 A. I do see that, yes.

3 Q. Just so we have the question in context, it says the  
4 question was did you expect that to the extent that there are  
5 any agreements or arrangements in place between 3M and any  
6 particular European government that concerned prices of the  
7 products that were going to be a part of the business that was  
8 being put up for sale, that 3M would bring that to your  
9 attention?

10 You went on to say not necessarily. We did due  
11 diligence at a slightly higher level. I don't think we saw  
12 specifically, well the data room contained whatever documents  
13 the data room contained. In terms of our due diligence that we  
14 discussed with the 3M management team, we didn't get into the  
15 details of specific agreement that they had with either the  
16 governments or suppliers or with other parties. So we didn't  
17 see specific agreements.

18 Do you see that, sir?

19 A. I do see that, sir.

20 MR. WIDELL: Objection. He was reading the passage  
21 into the record.

22 THE COURT: Well, there's an apparent inconsistency.  
23 The witness can explain it if he would like. I think that is  
24 what it is being offered for. Why don't you just go ahead  
25 and ask the question.

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Haas - direct

1 BY MR. CARLINSKY:

2 Q. You gave that testimony in your deposition. Was that  
3 accurate testimony?

4 A. I believe it is accurate testimony in the sense that I was  
5 answering your question.

6 Q. And the question that you were asked at that time was  
7 whether you had been shown during the course of the work you  
8 were doing for 3M any specific government pricing agreements.

9 Didn't you understand that to have been the question I  
10 asked you in your deposition?

11 A. Yeah. I don't recall seeing any particular agreements.

12 MR. WIDELL: Objection.

13 Q. That is not my question?

14 THE COURT: Go ahead.

15 MR. WIDELL: The objection is that Mr. Carlinsky  
16 misstated what Mr. Haas was asked at his deposition, which was  
17 not whether he had seen any specific pricing agreements. It  
18 was whether you expect to see any pricing agreements, and the  
19 answerer was not necessarily, and he went on to finish his  
20 answer.

21 (Pause)

22 MR. CARLINSKY: The question I asked the witness here,  
23 your Honor, was whether 3M --

24 THE COURT: Let's just get -- Mr. Haas, do you  
25 understand this answer is consistent with what you're

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Haas - direct

1     testifying or is your memory different, or you're not sure?

2             THE WITNESS:   The answer is that I don't recall one  
3     way or another, you know, what we saw at the time that we saw  
4     this stuff six years ago.   I don't know if that is consistent  
5     or inconsistent with what was said at the deposition, but that  
6     is my recollection.

7     BY MR. CARLINSKY:

8     Q.   Now what I would like to ask you to do if you would,  
9     please, is look at Page 97 line 18 through Page 98 line 9.

10            MR. WIDELL:   Objection, your Honor.   I apologize for  
11    keeping doing this, but it doesn't sound like there is any  
12    impeachment use going on.   The witness is being asked to look  
13    at some deposition testimony before a question is asked.

14            The question is asked, the examiner doesn't like the  
15    answer and directs the witness to the prior testimony.   It  
16    seems like an improper use of the deposition transcript.  
17    Certainly it doesn't appear it will be to impeach an answer to  
18    a question that hasn't been asked yet.

19            MR. CARLINSKY:   I have to ask the question.

20            THE COURT:   That is the way it usually works.

21            MR. CARLINSKY:   I thought I did.

22            THE COURT:   What is the pending question?   And I can  
23    look at the testimony and if it is a prior inconsistent  
24    statement, we can think about it.

25     BY MR. CARLINSKY:



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Haas - direct

1 Q. Mr. Haas, isn't it a fact that 3M did not provide you with  
2 any specific pricing agreements during the period of time that  
3 you were advising it in connection with the sale of the pharma  
4 business?

5 A. I don't recall whether they did or did not.

6 Q. Now Let's see if this will help refresh your recollection  
7 then.

8 THE COURT: What are we looking at?

9 MR. CARLINSKY: Would you kindly look at 97, line 18  
10 through 98 line 9.

11 THE COURT: Let me read it.

12 (Pause)

13 BY MR. CARLINSKY:

14 Q. Have you looked at that testimony, sir?

15 A. I did, yes.

16 Q. Did you give that testimony --

17 THE COURT: Just a second. (Pause)

18 All right. Go ahead.

19 BY MR. CARLINSKY:

20 Q. Mr. Haas, did you look at your deposition testimony?

21 A. I did, yes.

22 Q. When you were asked the question at Page 97 line 18:

23 "Q And is that true for each significant product like Tambocor  
24 and Minitran that you understood were key products within the  
25 European business? That is, you didn't seek to do due

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Haas - direct

1 diligence whether there were any pricing agreements between 3M  
2 and any European governments concerning those products?"

3 Your answer was:

4 "A Not to my recollection. I don't recall seeing any  
5 particular pricing agreements or contracts for that matter that  
6 3M had with any outside parties."

7 Do you see that answer?

8 A. I do, yes.

9 Q. When you testified then, were you testifying truthfully,  
10 sir?

11 MR. WIDELL: Objection, your Honor. It is a different  
12 question. The question on the record is, isn't it a fact that  
13 3M did not provide you with any specific pricing agreements?  
14 That is not, not the question being asked here.

15 The question that is being asked at the deposition was  
16 did you or Goldman Sachs do any due diligence as a verb, do due  
17 diligence to ascertain if there were any specific agreements.

18 MR. CARLINSKY: I don't understand that objection.

19 THE COURT: Well, the answer is I don't recall seeing  
20 any particular pricing agreements or contracts.

21 Is that fair to say that is consistent with your  
22 testimony today?

23 THE WITNESS: Yes, I personally don't recall seeing,  
24 you know, the agreements that we're talking about here. I go  
25 on to say the team could have done more diligence or otherwise

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Haas - direct

1 that I didn't see. That is the spirit of the answer, I  
2 believe.

3 BY MR. CARLINSKY:

4 Q. Today you're telling us you don't recall one way or the  
5 other. At your deposition you testified very clearly you  
6 didn't recall seeing any pricing agreements, didn't you, sir?

7 MR. WIDELL: Objection.

8 THE COURT: Sustained. He said I don't recall.

9 A. I am certain that whatever was in the data room some of our  
10 team members may looked at, but I didn't look at the data room  
11 in particular.

12 It sounds to me like pretty similar to "I don't recall  
13 one way or the other," not the exact words, but the meaning  
14 seems to me similar.

15 BY MR. CARLINSKY:

16 Q. Do you recall any dialogue that you had with anyone at 3M  
17 regarding pricing agreements or specific pricing agreements?

18 A. I do not recall, I guess I'll say it one way or the other  
19 whether we had that dialogue. I presume we had dialogue about  
20 price and volume, but I don't recall the specifics of any of  
21 that.

22 Q. Again I will direct your attention to Page 96 line 16  
23 through 24.

24 A. Okay.

25 Q. At line 16, you were asked in connection with the due

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Haas - direct

1 diligence due on the European business, did you or anyone on  
2 your team at Goldman Sachs attempt to determine whether there  
3 were agreements with any of the European governments regarding  
4 prices at which products would be sold going forward? Do you  
5 see that question?

6 MR. WIDELL: Objection.

7 Q. And the answer you gave is, "I don't recall dialogue about  
8 specific agreements with governments."

9 Do you see that answer?

10 A. I do see that answer.

11 Q. You didn't testify, sir, that I don't recall one way or the  
12 other. Your testimony in your deposition was "I don't recall  
13 dialogue about specific agreements," correct?

14 A. My recollection from the deposition is the intention of my  
15 answers were I said I don't recall is that I don't recall one  
16 way or the other, which is I didn't answer the question just  
17 now that way.

18 I didn't I guess before I saw this in writing, you  
19 know, think about the difference between I don't recall or I  
20 don't recall one way or the other.

21 MR. CARLINSKY: Your Honor, permission to treat the  
22 witness as a hostile witness and examine him with leading  
23 questions, please.

24 MR. WIDELL: I object.

25 THE COURT: You have been asking leading questions all

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Haas - direct

1 throughout the testimony.

2 MR. CARLINSKY: I tried to change when objection was  
3 raised. I ask permission to treat him as a hostile witness.

4 THE COURT: All that means here is if you can ask him  
5 leading questions.

6 MR. CARLINSKY: Yes.

7 THE COURT: I suppose you might raise your voice, too,  
8 but it doesn't have any impact on me.

9 MR. CARLINSKY: I want to be able to do this more  
10 efficiently.

11 MR. WIDELL: There is nothing hostile about this  
12 interaction.

13 THE COURT: I agree. Mr. Carlinsky, you have read it  
14 with a certain intonation. You understand you to suggest there  
15 is an inconsistency between saying specifically I don't recall  
16 and the answer now, which is I don't recall one way or the  
17 other.

18 There is an inference available of an inconsistency,  
19 and that is for me to decide what to do with. I have heard the  
20 witness' testimony as to his explanation, and if this is how  
21 you want to use your time, okay.

22 MR. CARLINSKY: I can move on this particular point.

23 THE COURT: Good.

24 BY MR. CARLINSKY:

25 Q. Mr. Haas, just to finish up this line with two more

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Haas - direct

1 questions, do you recall whether you even felt the need to ask  
2 3M whether there were any specific pricing agreements relating  
3 to any of the products or any of the key products in the  
4 European business?

5 A. I don't recall one way or the other.

6 Q. Did you expect that if there were agreements in place  
7 between 3M and any government to reduce the price of any of the  
8 key products by a material amount, if those would have been  
9 made available to you by 3M?

10 A. What was the question? Did I expect?

11 Q. Did you expect as a banker working for 3M, did you have an  
12 expectation that if there were agreements between 3M and a  
13 third party, government or otherwise, that risked a material  
14 price decrease on any of the featured products that this was  
15 being sold on, those agreements would be brought to your  
16 attention?

17 MR. WIDELL: Objection, your Honor. The question was  
18 already asked, actually the exact question from the deposition  
19 transcript and the answer was read in. It is basically an  
20 asked and answered objection. The answer was "not  
21 necessarily," and it came out in the transcript.

22 MR. CARLINSKY: I am putting the question to the  
23 witness here.

24 THE COURT: I am going to overrule that.

25 A. Is it the question you asked me previously?

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Haas - direct

1 Q. No. I am asking you the question now, did you have an  
2 expectation, if there were agreements in place that affected  
3 the price in a material way on a key product in the business  
4 you were trying to sell, the European business, do you have an  
5 expectation those agreements would have been brought to your  
6 attention?

7 A. Again I guess not necessarily. Sometimes those documents  
8 are in a data room or otherwise, but we do not necessarily see  
9 those documents. We would do due diligence around the numbers.

10 Q. If the documents existed and they had a potential material  
11 effect or impact on the business, would your expectations have  
12 been different?

13 A. We generally look at the financial projections and ask  
14 questions around those projections.

15 Q. That is not my question.

16 A. We tend not to independently verify the underlying  
17 documents or assumptions that underlie a set of projections.

18 Q. You're relying on management to give you those projections?

19 A. Correct.

20 Q. My question is different, Mr. Haas.

21 If there were agreements in place that put at risk a  
22 material impact to the business, would you have expected those  
23 types of agreements to be made available to you?

24 A. Again not necessarily. The projections were consistent  
25 with what those agreements stated.

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Haas - direct

1 Q. Let me ask you a very specific question.

2 If there was an agreement in place whereby the sales  
3 price of Tambocor CR in France was going to be reduced at a  
4 material level going forward, would you have expected that  
5 information to have been brought to your attention?

6 A. If it was embedded in the financial projections, it would  
7 have been part of the discussion around the financial  
8 projections. That is the context in which we would have  
9 discussed something like that.

10 Q. I am not sure I understand your answer.

11 THE COURT: Do you mean, Mr. Haas, you would have  
12 expected it either to be embedded in the financial projections  
13 or somehow otherwise brought to your attention?

14 THE WITNESS: Yeah, I think that is a fair way to  
15 characterize that.

16 BY MR. CARLINSKY:

17 Q. Mr. Haas, I am going to direct your attention again to your  
18 deposition testimony, at Page 178 line 5 through Line 12.

19 THE COURT: Actually, it is 5:30 so we are going to  
20 stop for the evening. How much longer do you anticipate with  
21 Mr. Haas?

22 MR. CARLINSKY: 45 minutes, moving to different  
23 topics.

24 THE COURT: "Half an hour ago" you said an hour ago.

25 MR. CARLINSKY: Then we had a bunch of colloquy.



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Haas - direct

1 THE COURT: Fair enough. Mr. Widell, how long do you  
2 anticipate?

3 MR. WIDELL: I'm anticipating about 30 minutes.

4 THE COURT: Well, work something out with Mr. Haas as  
5 to -- do you have something, Mr. Carlinsky, before on this  
6 specific point?

7 MR. CARLINSKY: I was hoping we were going to continue  
8 with Mr. Haas tomorrow morning.

9 THE COURT: As I say, you are going to need to work it  
10 out. I don't know what -- that is for you all to work out.

11 MR. CARLINSKY: Can we ask Mr. Haas what his schedule  
12 is tomorrow?

13 THE COURT: You don't need me for that, unless you do,  
14 in which case I am here.

15 MR. CARLINSKY: I'll worry about it.

16 THE COURT: We are going to get his testimony so you  
17 have got to work it out. You are excused for the evening. You  
18 can step down. You remain under oath, and we'll bring you back  
19 in to finish up the examination.

20 THE WITNESS: Thanks.

21 (The witness left the witness stand)

22 THE COURT: We'll pick up hopefully with Mr. Haas in  
23 the morning, but you all will work it out.

24 I have a request which is just for you all to come to  
25 agreement on what documents have been admitted thus far,

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Haas - direct

1 including any translations where necessary to joint -- we had a  
2 couple of instances where we were talking about documents that  
3 have been admitted as joint exhibits. Make sure you're in  
4 agreement as to what has been admitted thus far and check with  
5 my staff to make sure we're on the same page, and that way I'll  
6 have in front of me with some clarity what has been admitted so  
7 I know we're discussing something that is in, okay?

8 Anything else we need to address?

9 MR. WIDELL: Not from the defendants' side.

10 MR. ARMENIO: From the plaintiff, your Honor, it is  
11 just your Honor mentioned you might want some briefing around  
12 the DX 330 motion in limine on the French agreement, so I would  
13 mention that. A similar issue is DX 588, the presentation that  
14 they tried with three different witnesses to get in. It was  
15 sustained each time.

16 All our fact witnesses are done, so there is nobody  
17 else for them to turn to. I would ask that your Honor, how you  
18 would like us to deal with that, whether you want I can make a  
19 verbal motion right now on it or you like paper on it. I am  
20 happy to proceed with it that way. I don't want to keep taking  
21 up your Honor's time with the same argument again and again.

22 THE COURT: Why don't you put both those points in  
23 paper.

24 MR. CARLINSKY: Cn we get it to the court on Thursday?

25 THE COURT: That is fine, simultaneous on Thursday.

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Haas - direct

1 MR. ARMENIO: Yes, your Honor. Thank your Honor.

2 THE COURT: All right. We are a little behind on  
3 time, obviously. We can check with my clerk. I need to still  
4 start us at 9:30 tomorrow and end in the 5:00 to 5:30 range for  
5 my own obligations, so we're going to shave some time off of  
6 lunch and breaks and the like. If we haven't gotten to the 18  
7 hours a side by the time anticipated, I may, rather than  
8 killing ourselves each day, take whatever is left that we need  
9 to do on the Thursday that we had anticipated for closing. My  
10 hope is not to do that. I need that time as much as you all  
11 do, but you get 18 hours each, you will get 18 hours each, all  
12 right? I will see everyone at 9:30.

13 Let me just say, the time is your time, but some  
14 streamlining can be done I think still with just organizing the  
15 exhibits and the like between what is being referred to, what  
16 is already in, what is in front of the witness and the like.

17 Let's work on that.

18 (Court adjourned until Wednesday, January 16, 2013, at  
19 9:30 o'clock am)

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Haas - direct

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